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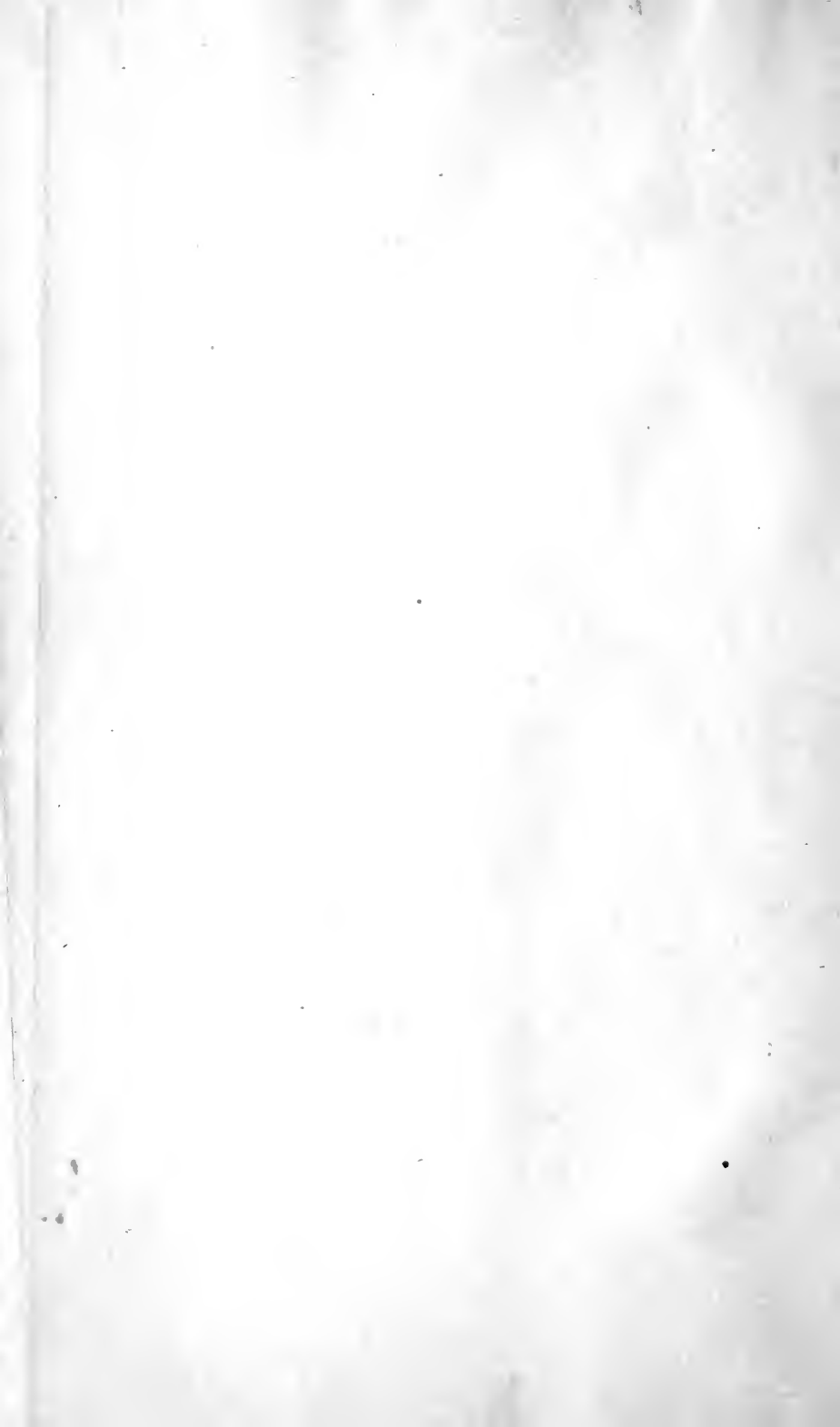
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*Samuel T. Drake Esq
from W. Whitehead*

The Eastern Boundary of New Jersey.

A REVIEW

OF THE

HON. JOHN COCHRANE'S PAPER

ON THE

WATERS OF NEW JERSEY,

READ BEFORE THE HISTORICAL SOCIETY OF NEW YORK:

AND A REJOINDER TO THE REPLY

OF

"A MEMBER OF THE NEW YORK HISTORICAL SOCIETY:"

BY

WILLIAM A. WHITEHEAD.

NEWARK, N. J.:

PRINTED AT THE DAILY ADVERTISER OFFICE.

1866.





The Eastern Boundary of New Jersey.

A

REVIEW OF A PAPER

ON THE

WATERS OF NEW JERSEY,

READ BEFORE THE HISTORICAL SOCIETY OF NEW YORK,

BY THE HON. JOHN COCHRANE,

(Attorney-General of that State,)

AND A REJOINDER TO THE REPLY

OF

"A MEMBER OF THE NEW YORK HISTORICAL SOCIETY,"

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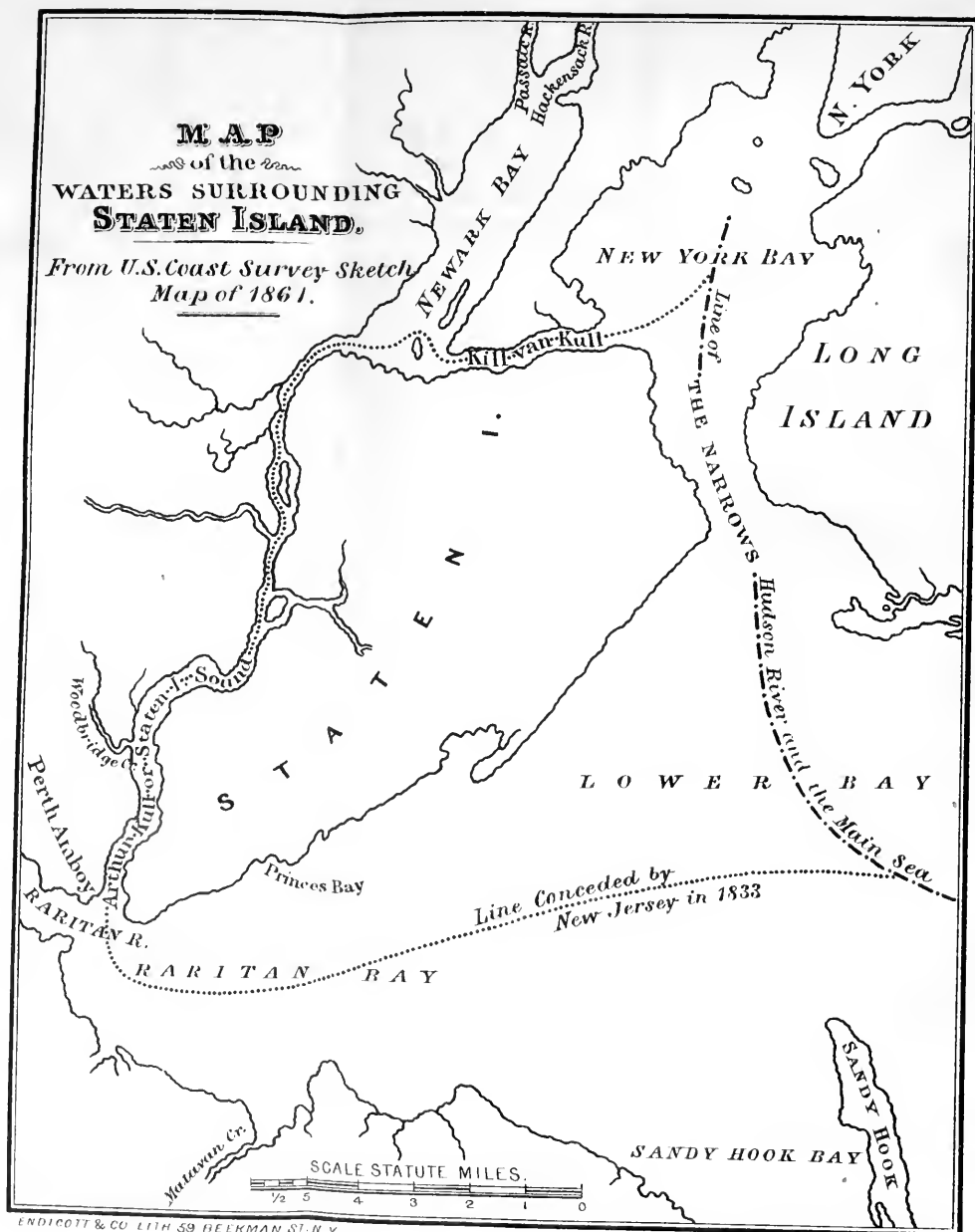


REPRINTED AT THE REQUEST OF THE N. J. HISTORICAL SOCIETY.

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. The following articles were originally printed in the "Yonkers (N. Y.) Gazette," Mr. COCHRANE having given publicity to his views through the columns of that paper.

Their appearance, of necessity, in several weekly instalments, and with a considerable period intervening between the two, rendered some repetition of facts and authorities necessary, which under other circumstances might have been avoided, and prevented the treatment of the subjects involved in a more systematic manner.

They are now reprinted, at the request of the New Jersey Historical Society, as originally written, excepting verbal corrections and the introduction of notes and authorities.

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REVIEW.

There are some questions which, however thoroughly discussed and definitely settled, will "ever and anon" be evoked from a sleep of years by enquiring, mercurial spirits, with a demand for a re-discussion and a re-settlement, although nothing may have occurred while they have lain dormant to warrant the procedure—although no new light may have arisen to illumine what was before dark, or any good purpose be effected by their revival. For a time, factitious circumstances may infuse into a question of this kind, some semblance of vitality and importance; but, however potent may be the influence of Error, or however protean the forms it may assume, if Truth has been ever elicited, the lookers-on may quietly await the issue, confident that the vexed question, ere long, will be restored to its wonted state of repose.

Such is the character, such the present position, and such the ultimate fate of the question which was made the subject of extended comment, by the Hon. Mr. COCHRANE, in a paper read at a meeting of the New York Historical Society, in June, 1865.

Nothing has occurred rendering it advisable to change the present mutual boundaries of, or to disturb the friendly relations existing between, the States of New York and New Jersey; no new information of essential importance affecting the points formerly at issue, has been gathered; and only the fact that, a high law officer, connected with the Executive Department of the State of New York, has revived the topic, and given his views respecting it, publicity—not only by their presentation to such a distinguished body as the New York Historical Society, but by printing them in full over his own name—gives to it a temporary interest. It is the intention of this review to facilitate the return of the subject to the shades whence it was drawn.

The theme which Mr. COCHRANE gravely propounded, and which he so elaborately discussed, was the assertion "THAT THE WATERS BETWEEN "STATEN ISLAND AND NEW JERSEY, THE KILL VAN COLL, THE SOUND AND "RARITAN BAY, OR BY WHATEVER OTHER BAPTISMAL NAMES THEY OR

"THEIR PARTS MAY HAVE BEEN, OR ARE NOW DESIGNATED, TOGETHER
 'WITH ALL THE WATERS WHICH LAKE STATEN ISLAND SHORES, WERE FROM
 "THE PERIOD OF THEIR DISCOVERY, KNOWN AND ACCEPTED, AND SHOULD
 "PROPERLY NOW BE CONSIDERED, THE WATERS OF HUDSON'S RIVER."*

The proposition is a simple one, and its operation, if established, equally so: the aim and effect of the learned gentleman's paper being, to cut off New Jersey from any water privileges, excepting such as she may enjoy on her ocean-beat coast, or in Delaware bay, and place her a suppliant at the feet of New York, for permission to enjoy, in quietude, the rights which she derives from the same source that conferred upon her larger and more opulent sister State, the germs of her prosperity.

Mr. COCHRANE is met at the threshold of his investigation by certain "baptismal names" borne by the waters referred to, which he conceives to have been imposed "by accumulating *ignorance or design*;" and seems to imagine that, the generations past and gone, possessed neither eyes to perceive where physical peculiarities required the conferment of special appellations, nor judgment to determine what those appellations should be: his own acquaintance with the localities, and his own experience in navigating these "falsely" named waters, especially qualifying him to succeed where they so signally failed.

In order that his positions may be fairly and fully presented, the following extract from his paper is given at length:

"When Hudson, carefully consulting his soundings, 'went in past Sandy Hook' on the evening of the 3rd of September, 1609, he moored the Half Moon in 'The Bay.' A boat's crew proceeding upward to the

* Elsewhere in his paper, Mr. Cochrane presents the same proposition in other language, but of similar import, thus:

"*The demonstration that the waters of the Hudson, in their seaward current, debouch through both the Narrows and the Kills, would not only have exposed the futility of New Jersey's pretensions to Staten Island, but have effectually disposed of her commercial rivalry with New York.*"

And again:

"*I have now concluded the detail of the earlier historical evidence, which directs unequivocally to the conclusion, that the Hudson River empties itself, through its two mouths, the Narrows and the Kills, into the Bay of New York, which flows past Sandy Hook into the sea.*"

And again:

"I may now, I trust, be permitted to think that *the proposition submitted, that*

all the waters which surround Staten Island are the waters of the Hudson River, stands substantiated by abundant proof."

And again:

"*'The narrow river to the westward,' and 'the Narrows' at the south, the mouths through which the waters of the Hudson discharge themselves through the Great Bay into the main sea.*"

And again:

"*That mouth of the Hudson which through the Kills discharges its waters into "the Great Bay."*

It has been thought proper thus to quote Mr. Cochrane, as it has been asserted that the proposition he discussed was announced *only* in the language of the text, and the writer has been accused of *misrepresenting* him when quoting some of his own sentences as above given.

north, on a subsequent day, (September 6th,) we are told that they passed through the Narrows, into a commodious harbor, 'with very good riding for Ships.' In their further progress northward, they discovered the Kills in 'a narrow river to the Westward between two Islands.' The exploration of this river disclosed to them 'an open Sea,' now called Newark Bay. When the Half Moon first left her anchorage in 'The Bay,' (September 11,) Hudson cautiously passed through the Narrows, went into the River, and again found moorage near the mouth of the Kills, in 'a very good Harbour for all windes.'

"This simple statement of Hudson's discovery, purges effectually the clouded medium of subsequently distorted narrative; and our mental vision has direct access to 'the bay,' the 'harbor,' the 'western river,' and 'the open sea,' unperturbed into unnatural lineaments by the false names imposed by accumulating ignorance or design; and representing them as they lay, and as unchanged they lie, in physical aspect, the only distinguishable 'bay' below, the 'narrow straits' above, the estuary, roadstead, or 'harbor' within, 'the river' *conducting the upper waters to the west*, and beyond that, the 'open sea' in the distance. If now we apply to this fluvial system, the nomenclature adapted to it by the proper names since borne by *the river which originated it* and the ports on its banks, 'the bay' becomes the Great Bay of the North River; 'the Harbour,' the Harbor or Port of New York; and 'the narrow river to the westward' and 'the narrows' at the south, *the mouths through which the waters of the Hudson discharged themselves* through the Great Bay into the main sea.

"Here, then, is probably the most fitting place for the remark, that the confirmation of this hypothesis will be the explosion of the injurious theory upon which the Treaty of 1834 ceded to New Jersey one-half of the rights of New York to the waters of the Hudson, and of those which separate Staten Island from New Jersey, together with the lands under them, upon the very common error of mistaking the harbor of New York for the bay of New York, and of imposing the name of Raritan Bay on a portion of the waters of the Great Bay of the North River."

The reader will please notice that Mr. COCHRANE's "Great Bay of the North River" is simply "the bay" of Hudson and other navigators; and as such it will be considered.

On proceeding to advance his proofs applying to his hypothesis, he places prominently among them, and relies greatly upon, the testimony afforded by Maps; but it is a singular fact that *not one*, ancient or modern, confers upon "the bay" any cognomen conveying the idea that its waters are sufficiently homogeneous with those of the North River to authorize the adoption of the restricted appellation suggested by the Attorney-General.

The earliest geographers on their earliest maps—those quoted by Mr.

COCHRANE—leave it unnamed, as being simply an arm or portion of the Atlantic Ocean: or when they do give it a specific appellation, designate it as “Sand Bay,” “Port May,” or “Godyn’s Bay,” or “Cocnaet’s Bay,” not recognizing its relation to the North River. But these specific names soon disappeared; and the common sense of each and every generation since, has been in entire accordance with the present nomenclature, which is warranted by the physical peculiarities and configuration of the shores and shoals; as a general appellation to the whole expanse of the waters referred to, would be necessarily indefinite and consequently inappropriate. Convenience, propriety, and fact coincide in designating the waters to the west of the peninsula of Sandy Hook as those of “Sandy Hook Bay;” in considering those immediately south of the Narrows, as constituting “the lower bay,” in contradistinction to the one above; and those waters lying south of Staten Island, received from the Raritan River and Staten Island Sound, as “Raritan Bay.” It is not usual to claim for this last a more extended locality than it is strictly entitled to. It is not made to encroach on “the lower bay;” but, in conjunction with “Sandy Hook bay,” laves the shores of New Jersey and Staten Island; and contributes its quota to the ocean, through the Main Channel at Sandy Hook.

It is a noticeable circumstance that Mr. COCHRANE considers those maps which leave this expanse of water *without a name*, as substantiating its claim to the title he suggests, no matter what may have been the definite object had in view by their projectors. For example, he draws attention to a Map in “*East Jersey under the Proprietors*,” and says, “it confines the name of Raritan to the river now known as such, but represents none for the waters from its mouth to Sandy Hook;” and he styles it “a Map of the settled portion of New Jersey, *projected and described in the year 1682*;” adding, “the map of 1682 thus *singularly concurs* with the patent of 1665, [*The Monmouth Patent*,] in protecting “the bay” from the infectious waters of the Raritan.”

Now the author of the work referred to expressly states (*page 123*) that the map “was compiled [*for his work, published in 1846,*] from various sources”—for what? To “give the reader an idea of the extent of *the settled portion of the Province*,” in 1682. That was its purport, nothing more. If he had entertained the remotest idea that his map would have been referred to, to prove the non-existence of Raritan Bay, because of his omission to insert these words, it may be safely assumed that they would have been there. The Attorney-General should award him credit for not being influenced in the preparation of his map, “by the corruptions of the mother tongue” to which he alludes in his paper.*

* “Evidence,” says Mr. Cochrane, “may be multiplied till the truth becomes con-

To strengthen his position, Mr. COCHRANE gives two extracts, which connect with "the Bay" the adjuncts which he covets.

Cornelius Van Tienhoven, Secretary of the Province of New Netherland, speaks of it in 1650, as "the Bay of the North River;" and the Patroon Melyss purchased from the Indians, the same year, some lands "at the south side, in the Bay of the North River;" and with a little more research some few like instances might have been discovered; but it is safe to assume that in all such instances the appellation was not intended to partake of the exclusive character which Mr. COCHRANE would give it. Thus, for example—and one example will suffice, although others might be furnished—De Razieres, in his letter to Blommaert, says, "I arrived before the Bay of the great Mauritze River, sailing into it "about a musket shot from Godyn's Point into *Coeuraet's Bay*, where the "greatest depth of water is," etc.,* recognizing the existence among navigators at that early period of a specific appellation for a portion of "the Bay;" and it is a noticeable circumstance that De Vries, who probably went in and out of "the Bay" a greater number of times than any other navigator, during the domination of the Dutch, never conferred upon it a title connecting it exclusively with the North, or Hudson's River.

But is there anything remarkable that a great river should not carry its name with it to the ocean? There are many streams along our coast which, after placidly meandering through the country, conferring beauty upon the landscape and bestowing beneficent gifts upon the inhabitants, seem to decline having their names identified with the rougher and world-tossed waters of the ocean. The cases are too numerous to admit of the conjecture, that the failure of the stream of the Hudson to carry its name to Sandy Hook is an exception originating in "ignorance or design." Does it not argue some weakness in the positive proofs that they are identical, to insist so strenuously upon revising the present nomenclature, in order to identify the waters of "the Bay" with those of the river?

But it is essential to Mr. COCHRANE's theory that he should establish

spicuous, that the baptism of "the Bay" never was conferred on any other portion of the waters of the Hudson, [than the lower bay] till the habitual corruptions of the vulgar tongue enticed and betrayed an intelligent community into the injurious conversion of a roadstead or estuary of the sea into the Upper Bay of New York."

Although the map referred to in the text

was *not* given to the world in 1682, John Reid's map, which will be noticed on a subsequent page, *was issued* about 1683, and on that the waters south of Staten Island are designated "part of Raritan Bay."

* Collections New York Historical Society, Second Series, ii, 342.

the point; and the greater part of his paper is devoted to its development and illustration; the applicability of his quotations, in a simple historical enquiry, not being always apparent. He quotes Governor Dongan, who says "We, *in THIS government*, [New York] look upon *that Bay*, that runs into the sea at Sandy Hook *to be Hudson River*." This was in 1686—in a letter, by the way, which, for its partizan antagonism to the Proprietors of New Jersey, probably led to his recall by the Duke of York, whose interests he was trying to subserve*—and it seems that in 1865 there are some in "THIS government" equally blind to the distinction between the bay and the river.

Mr. COCHRANE also quotes two other documents, one, a Report upon the controversy respecting the commercial privileges of the Port of Amboy, in 1697;† and the other, a letter from an Engineer, who responds to the dictation of his superior by reporting the depth of the water "in the "other branch of the Hudson river," called "the Col," in 1701; both of a character similar to that of Governor Dongan's letter, equivalent to *assertions* of claims yet unestablished; and about as conclusive as *proofs*, as would be the counter assertions of the Governor and Proprietors of East Jersey, or as the assertions, current some time since, that the new Fire Department Law of New York was unconstitutional, or the right of a State to secede was unquestionable—the Port question having been subsequently settled *adversely to the claims of the New York authorities*, as the last two opinions have been effectually disposed of contrary to the wishes of those who advocated them.‡

Mr. COCHRANE considers the "impregnability" of his record evidence confirmed by the "testimony of the ancient Maps;" but an impartial enquirer will soon have reason to be satisfied that their testimony is of little value.

He says of the celebrated "*Carte Figurative*," § "However imperfect "the delineations, this map represents unmistakably the River Mauritius (now Hudson) as it washes the margin of Manlates Island, and, *enlarging thence its course to the ocean, swells into an expansive Bay, which "encloses Staten Island*, and ultimately passes at 'Sand punt,' into the "main sea."

This is a correct description of the map; and similar delineations in other maps—the swelling "into an expansive Bay," enclosing Staten Is-

* Chalmer's Political Annals, p. 628.

† Respecting this controversy more will be found in subsequent pages.

‡ As to the Fire Department Law, a prominent legal gentleman of New York, not

only *asserted* but *argued* that it was unconstitutional; but the Courts, nevertheless, decided otherwise.

§ N. Y. Col. Doc. i., 13.

land—showing as much water on the west side of the island as on the east, afford a clew to the authority upon which some of the writers of the time describe the locality, the knowledge of most of the parties being derived solely from the imperfect topographical details of these maps. But this very “*Carte Figurative*” of date 1616, ignores Mr. COCHRANE’S theory, by giving the name of “Sand Bay” to the expanded sheet of water which, he would have us believe, the “accumulating ignorance” of modern times, and the “corruptions of the mother tongue” prevent being called “the Bay of the North River.”

This same title of “Sand-bay,” is similarly used elsewhere, and so applied, will be found also on Jacobsz Map of “*Americae Septentrionalis*” of 1621, in the possession of Dr. O’Callaghan; a *fac simile* of which will be found in the same volume of the New York Colonial Documents that contains the “*Carte Figurative*.”

The description given by Ogilby (which appeared simultaneously with that of Montanus, from which Mr. COCHRANE quotes through a modern translation,) was evidently based upon the map of “*Nova Belgii Quod nunc Novi Jork vocatur, &c.*,” contained in his ponderous volume. As it is somewhat uncertain whether Montanus copied Ogilby, or Ogilby Montanus, the extract is here given as it appears in the contemporaneous English—“The Manhattans, or Great River, being the chiefest, having with “two wide Mouths washed the mighty Island Watouwaks, falls into the “Ocean. The Southern Mouth is called Port May, or Godyn’s Bay. In “the middle thereof lies an Island called the States Island, and a little “higher the Manhattan,” &c.* Now Ogilby’s map was derived from Vischer’s and Vander Donck’s, which place Staten Island in the centre of an expanded bay—having its specific title it will be observed—forming what Ogilby calls the “Southern Mouth” of the Great River, the other, or *northern mouth*, being Long Island Sound: “Watouwaks,” or more properly *Matouwacs* being the designation of Long Island, whose shores were thus washed. Why does not Mr. COCHRANE furnish a new title for Long Island Sound? The testimony of Montanus and Ogilby is as potent and applicable in that direction as in the other.

It will be perceived, therefore, that it is neither philosophic nor wise to base arguments upon descriptions framed from delineations acknowledged by Mr. COCHRANE himself, to be rude and imperfect. If maps of this character are reliable as evidence, he might claim with equal propriety that the Hudson has *three* mouths, and refer for proof to Vander Donck’s map, which makes a stream, which is called the “Groote Esopus River,”

* Ogilby’s America, Edit. folio, 1671, p. 170.

to connect with the Delaware, affording another outlet for the waters of the Hudson. He might thus have received into its capacious bay not only Staten Island, but the whole of New Jersey.

But it is unnecessary to pursue this portion of Mr. COCHRANE's argument further ; indeed in view of one physical fact which will be educed presently, it need not have been discussed at all ; but, before proceeding, some notice must be taken of his labored endeavor to make the appellation, "Achter Col," given to Newark Bay, derives its significance from its lying back or west of the bay on the east side of Staten Island, rather than from its relation to what is known as the upper bay or harbor of New York.*

The meaning of the words is well understood to be *Behind or Back of the Bay* ; and the bay meant, would seem to be at once made manifest by the inquiry, "Where did the people live who used the term?" There was a perfect propriety in the dwellers upon Manhattan Island conferring the title upon a sheet of water which lay *behind or beyond the bay which intervened between it and them*; but the appellation would have possessed neither significance nor appropriateness, had it been derived from the position of the inner expanse of water with reference to the lower bay, as it did *not* lay back of, or beyond, that bay to them, but *in an entirely different direction*.

It is somewhat remarkable that Mr. COCHRANE should quote Mr. Brodhead in support of his views and "to complete" his proofs. That historiographer says† "Achter Cul,' or 'Achter Kol,' now called 'Newark Bay,' was so named by the Dutch, because it was 'achter,' or 'behind' the 'Great Bay of the North River. *The passage to the Great Bay was known as the KILL VAN CUL,*" from which has been derived the present name of "the Kills,"—and he quotes Benson as his authority. Both writers evidently intended by "the Great Bay of the North River," the bay *north* of Staten Island: for "the Narrows," *not* "the Kills," are unquestionably the passage to the *lower bay*, which Mr. COCHRANE wishes to have considered the "Great Bay."‡

* Mr. Cochrane says, "Achter Cull," the early designation of Newark Bay, was readily and naturally rendered into the "After Bay" of the English, relatively to its position behind the upper Bay of New York. But the term "Achter," or *After*, was predicated only of localities in the interior and *behind those bordering on the sea coast*; and, while redressing the prevailing error which, generally, has referred the signification of the *Dutch Kills* to their relation to either Newark Bay or to an upper Bay of

New York, if the uninterrupted current of authority attributes, as we have seen that it does, the "Kill van Cull," or "the River of the Bay," *to that mouth of the Hudson which, through the Kills, discharges its waters into "The Great Bay,"* then will we have no difficulty in determining that the "Achter Cull" was named from its position "behind" the same "Great Bay."

† Brodhead's, N. Y., 1, p. 313.

‡ Mr. Benson, who was one of the New York Commissioners for arranging the

"Achter Col" from being first applied to the water only, gradually, as population spread and settlements began to be formed on the shores of Newark Bay, became the appellation for the land also, both northward and southward, until the whole of East Jersey would occasionally be designated as "Achter Col;" but the name, under the English rule, was soon lost; and the student of the geography of the State would scarcely recognize in the name of "Arthur Kull," applied to the Sound between Staten Island and the main, south of Newark Bay, all that is preserved of the original appellation of "Achter Col." North of the bay and running into New York bay, the stream still retains the appellation conferred at the same early period, the "Kill van Kull," or more commonly "the Kills," as stated by Mr. Brodhead.

It is susceptible of demonstration from documentary evidence, that the specific appellations borne by the waters referred to are not of modern introduction, are not the result of "corruptions of the Mother tongue;" have not originated through "accumulating ignorance" or through any nefarious "design" to absorb the Hudson, but are simply appropriate titles which the physical configuration and position of the localities have rendered necessary. They date back, for the most part, and particularly is it the case with the nomenclature of the waters west of Staten Island, to times anterior to the transfer of New Netherland to the English,* and it is safe to affirm, that no one, acquainted with the localities, would venture to express the opinion that such a specific nomenclature should give place to the general appellation of "Hudson's River;" for, as has been intimated already, if it had not been thought advisable to show how,

Boundary, in 1807, had, as we shall see, so little idea of considering the waters west of Staten Island to be part of Hudson River, that in his discussions with the New Jersey Commissioners he labored to establish that they formed "an arm of the sea."

*The "Calendar of Historical Manuscripts" in the office of the Secretary of State at Albany (pp. 190, 250, 273, 375, 301;) the "Calendar of Land Papers," (pp. 15, 37, 44, 45,) and the New Jersey Proprietary Records furnish abundant evidence of these specific appellations in grants anterior to the conquest of the English; and subsequent to that event the instances are still more frequent. Dec., 1663, Capt. Krygier, in a voyage to Newesing, "sail'd through the Kil van Kol:" "rowed down with the ebb the Kil behind Staten Island"—"went down the bay" and sailed "again towards the Manhattans"—thus circumnavigating Staten Island. (*N. J. Hist. Soc. Collec-*

tions, Vol. 1, p. 177, from *Albany Records*.) The "Kil van Kol" was so well known, that the people of Connecticut, the same year, when preparing for a settlement in New Jersey, allude to it by name.

In 1664, the Indians sold the Elizabeth tract to Bailey, Denton and Watson, the boundary on the east being "the River which parts Staten Island and the Maine"—and Governor Nicolls, when confirming the grant, calls it "the sea which parts Staten Island and the Main," and he particularly discriminates in one document between the Kil van Kol and Hudson River.

In 1669 the Charter of Woodbridge makes the eastern boundary of the tract "Arther Cull River, otherwise called the Sound." Gov. Andros calls the Kil van Koll "After Cull River," and the Sound "the Great Kill;" and so, on down to the present time, have these appellations continued to be used.

little foundation there was for Mr. COCHRANE's theory, even as presented with his chosen authorities, the statement of one single physical fact would have sufficed to refute his arguments..

Mr. COCHRANE is a military as well as a legal General. Let it be supposed that, with the skilfully trained eye of an experienced commander, he has selected a bold and adventurous detachment from among the watery hosts of the Hudson, and having placed himself at its head, he floats off with a strong ebb tide on an expedition to explore the new mouth of the river that he has discovered. On approaching "the Kills" his detachment is confronted and most unceremoniously jostled, turned around, impeded and opposed by a concourse of watery particles, very similar to those composing his more regular organization, but *pursuing a directly contrary course*. On inquiring into the cause of this rough treatment, the General is informed that he has wandered beyond the lines of the hosts of the Hudson, and is in collision with the advanced guard of the conjoined forces of the Passaic and the Hackensack, coming from the Blue Hills of New Jersey, and proceeding with all speed and irresistible velocity to a general rendezvous at Sandy Hook.

Finding all endeavors at progress in that direction useless, the north corner of the new mouth being effectually closed against him, the General proceeds, we will suppose, to execute a flank movement; if he cannot get in at the north, he may through the south corner; so falling in with the advancing columns of the Passaic and Hackensack, he takes his detachment with them into the lower bay, and watching his opportunity, he joins some returning battalions wending their way westward toward the southern end of Staten Island. By skilful management he prevents any of his force from being sent off with a scouting-party up the Raritan, and is congratulating himself that, by continuing with the main body, proceeding northward through the Sound, he is making rapid progress up the Hudson, when, lo! he finds that he and his detachment are being moved bodily to the westward into Achter Col Bay. Again he resorts to strategy. Succeeding in getting off the direct line of progress, he stealthily conducts his detachment to the right into slack water, and moves onward for awhile. Soon, however, is he interrupted and opposed by an overwhelming force that ridicules any attempt by his puny detachment to advance in that direction, and he finds himself and his command absorbed and carried off to rejoin the column they had sought to escape from—victims to the grasping propensities of New Jersey.

Did General COCHRANE ever know of a mouth of a river through which *some portion* of its stream did not run in one continuous ebb and flow of

tide? But what the tides of "the Kills," "the Sound" and "Raritan bay" *refuse* to do for the Hudson, they do regularly, each and every day, for the Passaic and the Hackensack. In other words, "the Kills" is *the northern mouth of those rivers* emptying into New York bay, as Benson and Brodhead say: "the Sound" is *their southern mouth*, emptying into Raritan bay. Would General COCHRANE have announced to the New York Historical Society that "the waters of the Hudson in their seaward current, debouch through both the Narrows and the Kills," or that "the Hudson River empties itself, through its two mouths, the Narrows and the Kills, into the Bay of New York?"—would he have thought it necessary to prepare his elaborate paper—had he known that, *not a drop of the water of the Hudson flows through the passage between Staten Island and the main?*

With this fact established beyond controversy, that no waters of the Hudson ever "lave the Staten Island shores" on the west, this Review might close; but a sense of what is due to truth and history prompts some reference to, and comment upon, the nature of the impeachment of New Jersey before the public thus made by the Attorney-General of her sister State of New York, and the manner in which she has been arraigned.

Mr. COCHRANE says, "The efforts of New Jersey to neutralize the commercial advantages of New York, and to promote her own aggrandizement are notorious;" that "recklessness" and "persistence" have characterized the prosecution of her "avaricious desires;" that "carved surreptitiously from the side of New York, under the opiates of one Captain John Scott, artfully discharged upon the drowsed senses of James, Duke of York, from the hour of her separation to the present, she has formed her national life to the rugged career of incessant competition with her parent State;" and is eloquent in the use of expletives such as the "encroachments," "pretensions," "preposterous claims," &c., of New Jersey, exhibiting feelings of irritability and hostility towards the State, which, considering his official position, comity alone should have led him to restrain. Let these accusations receive a brief examination.

The *right* of James, Duke of York, as grantee of his brother, Charles II., to convey to others that part of his domain now constituting New Jersey, does not seem to be questioned, and the intimate relations known to have existed between him and those to whom he disposed of it* warrants the assertion that the conveyance was intended to be full and complete, according to its tenor, whether "surreptitiously" obtained or not. He was dealing with personal friends and not striving to outwit stran-

* Pepy's Diary and Correspondence afford abundant evidence of this.

gers, by only keeping "the word of promise to the ear," and fully expected that the territory he described, with all its advantages and privileges, would pass into their quiet possession. His subsequent acts clearly prove this; for on the 23d of November, 1672, more than eight years after the grant, in a letter to his Governor, Lovelace; on the 29th of July, 1674, in a new grant to Sir George Carteret, in severalty; in another, on the 10th October, 1680, to Sir George's grandson and heir; and on the 14th March, 1682-3, in still another grant to the twenty-four proprietaries, did he reaffirm, in the most emphatic manner, the rights, powers, and privileges originally conveyed. Mr. BRODHEAD is of the opinion that, although the same words of conveyance were used in all these documents they cannot be assumed as covering Staten Island, because Governor Nicolls, writing to Lovelace in 1669, informs him that "Staten Island is adjudged to 'belong to New York;'" but the well-understood sentiments of Nicolls, in relation to the transfer of any part of New Jersey to Berkley and Carteret, render it very necessary to know *by whom* it was so "adjudged." It was not, certainly, by any legal tribunal, or the question of title would thereafter have been definitely settled; but if "We of THIS government," as Dongan expressed himself, were the only arbiters, it is not surprising, that the decision should have failed to meet with general acceptance. It cannot be fairly presumed that such a curtailment of the original limits of his grant should have been "adjudged" by James, and nothing appear on the face of his subsequent grants to indicate any intention to change the boundaries:—grants made long after the "opiates of one "John Scott" must have lost their effect.*

* The views of Mr. BRODHEAD, referred to in the text, were set forth at the time Mr. Cochrane read his paper before the New York Historical Society, and although the writer differs from him very decidedly in some of his conclusions, yet the several important and interesting *facts* which he so ably grouped together on that occasion, are evidently deserving of introduction here, many of them being new to most historians. In the course of his remarks, Mr. Brodhead said:—

"The constant opposition of the early Colonial authorities of New York to the dismemberment of its territory as granted by King Charles the Second to his brother James, in March, 1664, by the Duke of York's transfer of "Albania," or New Jersey, to John, Lord Berkley, and Sir George Carteret, in the following June, is, of course, familiar to those acquainted with American history.

"The transfer was a very improvident act which the Duke afterwards regretted, and which he would never have executed, if he had been properly advised. It was done in haste; while the expedition sent to seize New Netherland was yet at sea; and, apparently, through the cajolery of the infamous Captain John Scott. No steps were taken by the Duke's grantees to secure their own possession of New Jersey, until dispatches were received from Nicolls that he had conquered New Netherland from the Dutch. It was not until June, [August] 1665, that Philip Carteret arrived in America, as Governor of New Jersey; and then, for the first, Nicolls learned what had been so unwisely done by his chief, after he had left England. For ten months, he had exercised undeniable authority over the entire region between the Hudson and the Delaware, by virtue of his commission, as Governor from the Duke of York, of 2d April,

These boundaries were so explicit, that it is surprising there should have been any difference of opinion about them. It will do no harm to reproduce them here, inasmuch as they are only given in part by Mr. Cochrane.

"*All that tract of land adjacent to New England and lying and being to the westward of Long Island and Manhattan Island, bounded on the east, part by the main sea, and part by the Hudson River, and hath upon the west, Delaware Bay or river, and extending southward to the main ocean as far as Cape May at the mouth of Delaware Bay; and to the northward as far as the northernmost branch of the said Bay or River of Delaware, which is in forty-one degrees and forty minutes of latitude, and crosseth over thence in a straight line to Hudson's River in forty-one degrees of latitude, which said tract of land is hereafter to be called by the name or names of New Cæsarea or New Jersey.*"

Could language be used more definite? On the east a river and the ocean—on the west and south a river and a bay—on the north a straight

1664. As soon as he heard the unwelcome news, Nicolls wrote earnestly to the Duke, remonstrating against his improvident cession of New Jersey; and proposing that Berkley and Carteret should give up their prize, and take, in exchange, the territory on the Delaware, which had been reduced from the Dutch; (*New York Colonial Documents III*, 105; *Chalmers' Political Annals*—who gives the date erroneously, as November, 1665,—624, 625.) On the 9th of April, 1666, Nicolls urged the same suggestion to Lord Arlington, the English Secretary of State; (*Colonial Documents III*, 113, 114.) When he returned to England, the late Governor of New York carried with him a letter from Maverick, his fellow Royal Commissioner, to Lord Arlington, dated 25th August, 1668, in which the inconvenience of the Duke's release of New Jersey was demonstrated: (*Colonial Documents III*, 174.) * * * James, accordingly, took steps to regain New Jersey. It was not difficult for him to do this. Sir George Carteret was in Ireland, of which he had been appointed Lord Treasurer, in 1667. Lord Berkley, who had been one of the commissioners of the Duke of York's private estate, had just been detected in the basest corruption, and was now turned out of all his offices at Court, (*Pepys, Bohn's ed.*, 1858, *III.*, 167, 172, 174, 331, *IV.*, 28; *Burnet, I.*, 267.) He was glad enough to win the Duke's favor by offering to surrender New Jersey to him; and Carteret, at Dublin, willingly confirmed his partner's of-

fer, especially as they were to receive the Delaware territory in exchange.

"The evidence of this interesting and hitherto unknown feature in American Colonial History, has recently come to light in the "*Winthrop Papers*," now in course of publication by The Massachusetts Historical Society. On the 24th of February, 1669, Maverick wrote from New York, to Governor Winthrop, of Connecticut, that Governor Lovelace had just received a letter from his predecessor, Nicolls, at London, announcing that "Staten Island is adjudged to belong to N: Yorke. The L. Bark-ley is under a cloud, and out of all his offices, and offers to surrender up the patent for N. Jarsey. Sir G. Carteret, his partner, is in Ireland, but it is thought he will likewise surrender, and then N. Yorke will be enlarged." (*Massachusetts Historical Society's Collections, XXXVII.*, 315.) Carteret appears to have promptly assented to the proposed surrender; and the transaction was regarded on all sides as complete, for Sir George wrote to his brother Philip, the Proprietor's Governor at Elizabethtown, in June, 1669, that "New Jarsey is returned to his Royall Highness by exchange for Delawar. * * * some tract of land, on this side the river, & on the other side, to reach to Maryland bounds." (*Massachusetts Historical Society's Collections, XXXVII.*, 319.)

"Yet, while man proposes, God disposes. Neither the surrender nor the exchange thus arranged were ever accomplished. The

line extending from a point in 41 deg. 40 min. N. L. on one river to a point in 41 deg. N. L. on the other. Yet, it seems, the attempts of New Jersey to retain what was so clearly in word and intention conveyed to her is characterized by Mr. COCHRANE as indicating an avaricious and grasping spirit. Let a map of the States of New York and New Jersey be examined, and it will be found that the north partition point in their boundary is neither at the "northernmost branch of the Delaware" nor "in 41 deg. and 40 min. of latitude" but at 41 deg. 21 min. 31 sec. ! nearly twenty miles of latitude *south* of where it should be; causing about two hundred thousand acres of the soil of grasping New Jersey to lie on the New York side of the line; and had the wishes, aims and projects of the latter *entirely* succeeded, the line would have been still further south.

It would be impossible to compress within reasonable limits the particulars of the negotiations that led to this result; if the details are desired, they can be found in the eighth volume of the *Proceedings of the New Jersey Historical Society*. No one can give them an impartial examination without being satisfied that, if there were any "avaricious desires" exhibited through the long period during which the controversy lasted, it was *not* on the part of *New Jersey*.

restoration of Charles the Second to the Sovereignty, which that grand old statesman, Oliver Cromwell, had administered with such splendid ability, was followed by the most disgraceful politroonery which marks the annals of sycophantic and title-loving Englishmen. The Court became vicious, to a proverb. Sir George Carteret was expelled the House of Commons for corruption, in the autumn of 1669; but he still held his place of Treasurer of Ireland. Early in the spring of 1670, Lord Berkley, the disgraced swindler of the Duke of York, was, by the favor of the king, made Lord Lieutenant of Ireland, where he joined his co-partner Carteret. Both the New Jersey grantees were also proprietaries of Carolina, of which Berkley had just become Palatine, on the death of the Duke of Albemarle. At this moment, Lord Baltimore, an influential Irish peer, revived his old claim to the Delaware territory, which he insisted belonged to himself, as proprietor of Maryland, and not to the Duke of York, as the English representative of its ancient Dutch owners. (*Colonial Documents*, III., 70, 113, 186.)

"This Delaware question was a very nice one, for it raised several ugly points about the original title to New Netherland, which the English usurped from the Dutch. It

was handled very gingerly for several years and was not definitely settled against Maryland, by the Privy Council, until 1685. Meanwhile, Lord Baltimore was a powerful peer of Ireland, and might give her Lieutenant and Treasurer much trouble, if they made him their personal enemy. On comparing notes at Dublin, Berkley and Carteret thought it their best policy to let the Duke of York fight out the Delaware question with Lord Baltimore in London; and, in the mean time, they evaded the fulfilment of their agreement with James, and retained New Jersey. After the death of Nicolls, in 1672, they even prevailed on the Duke to write to Lovelace, fully recognizing their rights as grantees of the Province. In August, 1673, the whole of ancient New Netherland, including New York, New Jersey, and Delaware, was reconquered by the Dutch. The treaty of Westminster restored these acquisitions to Charles the Second, in February, 1674. In the following June, the King, by a new Patent, regranted to his brother James, the entire territory of New York and New Jersey. What the Duke did after he received his second Patent, it is not my purpose now to explain. I will only remark that the decision, which, in 1669, adjudged Staten Island to belong to New York, has never been disturbed. * *"

Let the same map be looked at with reference to the eastern boundary. A stranger examining its details, with the view of locating the lines named in the grant from James, would most naturally suppose that Staten Island—being part of the land westward and southward of Long Island and Manhattan Island—belonged to New Jersey; and it may be admissible here, although it has not been intended in this review to touch upon any legal points or technicalities, to draw attention to a passage from the argument of the New Jersey Commissioners in 1827, showing what should be the effect of a literal carrying out of the peculiar phraseology of the grant:

“Hudson river and all the dividing waters are notoriously *to the westward of Long Island and Manhattan Island*, and therefore within the descriptive words of the grant. *The land* to the westward of these islands passed by express words. This term [*land*] is of great extent in its legal operation, including all above and all below the soil, and therefore embraces all the lands westward covered by water. Unless the words describing the land granted are rejected, *New Jersey must begin where those islands end*. Nor ought they be departed from in favor of the grantor, because he has added a general boundary, calculated to make it vague and uncertain. If a conflict exists between a *particular description* and a general boundary, the latter ought to yield to the former, for it is an established rule in the construction of deeds, that if the grantee's words are sufficient to ascertain the lands intended to be conveyed, *they shall pass*, although they do not correspond to some of the particulars of the description. Then as no doubt can exist of the intention to pass all the lands *to the west of these two islands*, the additional description which makes the eastern boundary to be the main sea and the Hudson, ought not to lessen or impair the benefits of the grant in favor of the *grantor*, and against the *grantees*.”

How does it happen then, that New Jersey with all her avaricious and aggrandizing tendencies should have failed to secure the possession of Staten Island?

A student of our Provincial history needs not to be informed of the opposition made by Nicolls, whom the Duke of York had appointed Governor of all his possessions in America, to the transfer of New Jersey to Berkley and Carteret; it has already been adverted to. Before he was aware of the transfer he had exercised authority over the tract and bestowed grants upon persons intending settlements at Elizabeth and in Monmouth County; and it was not calculated to add to his amiability or courtesy towards the Proprietors' Governor, Philip Carteret, who arrived in 1665, to have those grants very summarily nullified by his superior. Carteret's attention being engrossed by the weighty cares and responsibilities incident to his peculiar position in a new land, among strangers,

with few, if any, trusty advisers, all expedients and measures for peopling and governing the Province untried, it is not surprising that questions concerning boundaries or territorial rights, should for a while have been left untouched. It is not to be supposed, however, that, because, as Mr. COCHRANE states, he has failed to discover any "recorded evidence" of the "initiation of New Jersey's enterprising encroachments" upon Staten Island, prior to 1681, that her right thereto was not previously thought of and asserted. It is susceptible of proof that acts of jurisdiction over the adjacent waters were performed by New Jersey, prior to that date, in establishing ferries—one ferry between Communipau and New York, being *licensed* as early as 1669, by Governor Carteret; and another established between Bergen, Communipau and New York, in 1678. Mr. COCHRANE has discovered an *application* made to the New York authorities for the establishment of one in 1750, nearly a century later, and considers that a proof of jurisdiction over the waters being ascribed to that province. Will he accord equal sufficiency to the prior cases in New Jersey?

But as many of the inhabitants of the city of New York, both Dutch and English, had their plantations on Staten Island, their relations had been and continued to be altogether with that place and government; and of course the authority of the functionaries of New York became more firmly established with each passing year. Yet there are not wanting, evidences of a conviction in the minds of some of the first men of that province, that Staten Island had passed from under their control. Thus in 1668, Samuel Mavericke, one of the King's Commissioners, in a letter to Secretary Arlington, says plainly—when objecting to the transfer of New Jersey to Berkley and Carteret;—"The Duke hath left of his "patent *nothing to the rest of New York.* * * Long Island is very poor "and miserable, and beside the city, there are but two Dutch townes "more, Sopus and Albany." Staten Island was too important a settlement to have been left out of this summary had it been regarded as yet a part of New York. If no doubt was entertained, how comes it that Nicolls should think it of interest to announce that the island had been "adjudged to New York?"

It will be remembered also, that negotiations were on foot for an exchange of New Jersey for other possessions on the Delaware; and that the exchange was thought at one time to have been perfected.* This of course would repress any formal attempts by Governor Carteret to possess himself of the island; and shortly after, came the Dutch to reconquer the

* See foot note on pages 14-16.

country and unsettle the relations between the people and the government. So that the point made by Mr. COCHRANE, of the postponement of the "enterprising encroachments" of New Jersey until 1681, if well taken, is susceptible of explanations showing it to have been perfectly consistent with an unshaken belief in the sufficiency of New Jersey's claim.

The repeated confirmations of the original boundaries by the Duke, have already been adverted to. They cannot be otherwise considered than as virtual rebukes of the aggressive disposition of his governors, and established beyond doubt his own intention to concede all his rights within those bounds; for although his Secretary, Werden, at one time expressed some doubt as to whether the successors of Sir George Carteret ("for whom the Duke hath much esteeme and regard") would receive from him equal favor, yet we find the same Secretary, as late as November, 1680, writing, that his Royal Highness had been pleased "to confirm and release to the Proprietors of both Moities of New Jersey, all their and his Right to *any Thing* besides the Rent reserved, *which heretofore may have been doubtful*, whether as to Government or to Publick Dutys in or from the places within their grants." Is it at all surprising that with such documents in their possession, the proprietors should have contested the occupancy of Staten Island by New York? or that from that time to the year 1833, New Jersey should have consistently asserted the superior validity of her claim? Should her course in doing so, without any resort to ultra measures to enforce it, bring upon her contumely and unwarrantable aspersions?

Notwithstanding all the proceedings of New York calculated to exasperate her people—the forcible arrest and abduction of her citizens from her own soil, even from the very wharves of Jersey City, under processes from New York Courts—the neglect often shown to the appeals of New Jersey for some action that might lead to a settlement of the controversy—even actual insults, most pointedly evinced by the passage of an Act by one of the Legislative houses, in 1827, which declared the boundary of New York to extend to low water mark along the whole of the New Jersey shore: *at the very time when Commissioners were in session at Albany, discussing terms of compromise*,*—notwithstanding all these acts of attempted or successful aggression, New Jersey has ever shown *not* an avaricious, but a conciliatory and liberal spirit, never more clearly manifested than in the terms she finally acceded to, by which she relinquished Staten Island and other possessions, in order that she might rescue her rights in the adjoining waters from the *absorbing* tendencies of New York.

* See message of Gov. Williamson to the Legislature of New Jersey, Feb. 4., 1828.

One other topic is presented by Mr. COCHRANE, which must be noticed before this *Review* of this remarkable paper is brought to a close. It is intimated that the determination of New Jersey's claims "will doubtless require the ultimate decision of the Supreme Court of the United States."*

The Supreme Court of the United States has never before, probably, been held *in terrorem* over New Jersey. Asserting no claim not founded in right, asking nothing she might not reasonably expect to be granted, and ever ready to make all proper concessions for the preservation of peace and promotion of harmony, the decisions of the Supreme Court have rather been sought than avoided in all controverted cases, as likely to bring with them satisfactory results. This disposition has been remarkably evinced in the progress of the discussion with New York respecting boundaries.

Who proposed in 1818, the appointment of Commissioners to prepare a statement of facts relative to the controversy, to be submitted to the Supreme Court for its decision? New Jersey! By whom was the proposition left, not only unresponded to, but *unnoticed*? New York! Who was it that, in 1827, declined to recommend a reference of the matter to the Supreme Court, as suggested by the Commissioners of New Jersey? The Commissioners of New York! What, eventually, was the principal inducement New York had for the appointment of the Commissioners who agreed upon the terms of settlement in 1833? The commencement of a suit in the Supreme Court, with a view of having the just claims of New Jersey established! The fact is indisputable, that the unwillingness to bring the matters at issue to a judicial decision, has all been on the part of New York.† Why then, after New Jersey has thus fairly

* Mr. Cochrane's language is "New Jersey, contending that the main sea flows only without Sandy Hook, asserts, by an extension thereto of the central dividing boundary line, her right to the southerly one half of the Lower Bay of New York, inclusive of a substantial section of the ship channel to the Harbor of New York."

"The determination of this claim of right has already received juridical judgment; and will, doubtless, require the ultimate decision of the Supreme Court of the United States. Should it be repressed, as there is no good reason to doubt that it will be, an important enquiry would ensue into the rights of New York in the Lower Bay, from the mouth of Mattavan Creek to Sandy Hook."

† As early as 1806 the Legislature of New Jersey made advances to New York for the

appointment of Commissioners, which was responded to; and the Joint Commission met in Newark in September and October, 1807, but "the Commissioners on the part of New York, would not agree to any general jurisdictional line inconsistent with the principles set up by them"—which involved the exclusive jurisdiction over all the waters between the two States, "including shores, roads, and harbors within the natural territorial limits of New Jersey." The utmost of their concessions being a willingness "to receive proposals for extending accommodations in some particular cases which might be shown to be beneficial to citizens of New Jersey, and not injurious to New York."—(*Report of New Jersey Commissioners to Legislature.*)

In 1818, was made the proposal referred to in the text, which was never noticed by

manifested her desire to abide by the decisions of the tribunal of last resort, does the Attorney General of New York think it necessary to threaten her therewith? Why, after more than thirty years acquiescence in, and, it is believed, cordial co-operation on the part of both States to carry out the terms of the agreement entered into in 1833, is it now thought becoming for so prominent an officer of the State of New York to call in question in so public a manner, the propriety of that agreement, if not, indeed, its binding force? Doubtless, if Benjamin F. Butler, or Peter Augustus Jay, or Henry Seymour were living, the Historical Society of New York might have it demonstrated that, as Commissioners of New York, they did not assent, in that agreement, to any thing which "trafficked" away "the interests of the State," or "compromised them by relinquishing a moiety of the unquestioned rights of New York." It is no part of the writer of this *Review* to vindicate them; that must be left to others.

The agreement of 1833 was intended to be perpetual, every formality being observed calculated to give it a duration commensurate with the existence of the States themselves, having been confirmed by the legis-

the authorities of New York.

In 1824, New Jersey again authorized the appointment of Commissioners to meet Commissioners to be appointed on the part of New York, but the time limited by the Commissioners was suffered to expire without any corresponding act being passed by the Legislature of that State.

In 1826, the arrest and imprisonment of the Deputy Sheriff of Richmond County, for serving process, under the authority of the laws of New York, within the jurisdiction of New Jersey, led to an informal intimation from the Governor of New York, that, if the time for the appointment of Commissioners was extended, they would probably be appointed on the part of New York. His intimation was promptly acted on by New Jersey, and tardily by New York. The Commissioners met in Newark, New York and Albany, at the latter place witnessing the passage of the insulting act mentioned in the text. "This government had a right to expect" said Gov. Williamson in his message to the Legislature, "that pending the negotiation for an amicable settlement of the differences, on conditions honorable and satisfactory to both parties, all things would have been permitted to remain as they were." As to the proposition made by the New Jersey Commissioners for a submission of the differences to the arbitrament of the Supreme

Court which was unfavorably received by the Commissioners of New York, it must be said in explanation, that the Supreme Court then was in such bad odor in New York, that on the 12th of February, 1829, the Committee on the Judiciary in the Senate of the State, in a report relative to the New Jersey Boundary, made it a question *whether* "the article of the Constitution of the United States, which extends the Federal power to controversies between two or more States, gives the Supreme Court of the United States cognizance of questions which may arise between members of the Confederacy as to their sovereignty and jurisdiction."

The Commission of 1827 thus terminating fruitlessly, New Jersey determined to test the authority of the Supreme Court in the premises.

She commenced a suit in that Court in February, 1829, and the necessary papers were served upon the authorities of New York, returnable in August following. No appearance having been entered for the defendants, further processes were issued, returnable to January term, 1830; but still no attention was paid to the mandates of the Court. Mr. Southard, Attorney General of New Jersey, and Mr. Wirt, the solicitor associated with him, then notified the Governor and Attorney General of New York that they should move the Court on

latures of both, and sanctioned by a special law of Congress, "made in pursuance of the Constitution," and consequently of supreme authority, "any thing in the Constitution or Laws of any State to the contrary notwithstanding." Is it at all probable that the Supreme Court could, if it would, or would if it could, set aside an agreement thus made and thus ratified? Surely, any attempt to disturb the amicable relations existing between the two States, by suggestions of the kind put forth by Mr. COCHRANE, cannot be considered but impolitic, unjust, and unwarranted by any circumstances of the time.

Enough has been said to show how erroneous in all respects are the views the gentleman has promulgated in consequence of his misconception of the true topography of the district under discussion. Technicalities of law have not been touched upon, as their discussion entered not into the intention of the writer; but had the claims of New Jersey been submitted, as she desired, to the decision of the Supreme Court, the results would probably have been more favorable for her interests.

The length of this *Review* precludes any discussion of the terms of the agreement of 1833-4 fixing the boundaries as they now are.* Although

the 13th February, to proceed *ex parte* in the cause. When the day arrived, New York did not appear, but a letter from the Attorney General of the State, informed the Court that its process had been received, but, said he, "the opinion is entertained on "the part of the State of New York that "the Court cannot exercise jurisdiction in "such a case without the authority of an "act of Congress for carrying into execution that part of the judicial power of the "United States which extends to controversies between two or more States." The Court, however, through Chief Justice Marshal, declared that "precedent for "granting the process had been established "upon very grave and solemn argument"—but, in order that some defective technicality in the service might be remedied, the consideration of the cause was postponed.

In January term 1831, after the regular service of process, New York not appearing, Chief Justice Marshal delivered the opinion of the Court, establishing the point that the defendant having failed to appear, the complainant had the right to proceed *ex parte*, and it was decreed and ordered that "unless the defendant, after due notice, should appear on the second day of "the next January term and answer the bill "of the complainant, this Court will proceed "to hear the cause on the part of the complainant, and to decree on the matter

"of the said bill."

In January 1832, New York did not answer otherwise than by filing a demurrer signed by the Attorney General of the State, which the Court accepted as an answer, because Mr. Bronson, the Attorney General, was a practitioner in the Court, and the paper in consequence *might be* considered as an appearance of the State, —but the Court said, "If the Attorney "General did not so mean it, it is not a paper which can be considered in the cause, "or be placed on the files of the Court."—The Court, therefore, directed the demurrer to be set down for argument in the following March. (*Peter's U. S. Supreme Court Reports*, vol. III., p. 461, vol. V., p. 284., vol. VI., p. 323.)

The appointment of Commissioners, however, superseded further judicial action, and it is thought that the consent of New York to enter into the arrangement was due in some measure to the fact that, the friends of Mr. VAN BUREN, then a candidate for the Vice Presidency, and looking still higher, were fearful, as he was well-known to be averse to the settlement of the controversy by compromise, that *he would not get the vote of New Jersey unless the differences between the two States were amicably adjusted.*

*The agreement will be found appended to these papers.

so inconsiderately denounced by Mr. COCHRANE, they will be found on examination to have been framed in a spirit of anxious solicitude to put an end forever to the disputes between the two States, the concessions being for the most part made by New Jersey; and it is hoped that, neither by word nor deed, may the good understanding then arrived at be disturbed.

W. A. W.

NEWARK, New Jersey, August, 1865.

* * * The foregoing Review was replied to by Mr. HENRY B. DAWSON, the Editor of the "Yonkers Gazette," in a series of articles, which appeared weekly in the columns of his paper, from October 28th to December 16th, 1865, as contributed by "a member of the New York Historical Society." Most of the following "Rejoinder" was written, and part of it in the hands of the publisher of the Gazette, before the authorship of the articles was announced, which will account for its being framed as an answer to an anonymous writer. It appeared in the Gazette in four portions, between December 23d, 1865, and January 14th, 1866.

REJOINDER OF MR. WHITEHEAD

TO

"A MEMBER OF THE NEW YORK HISTORICAL SOCIETY."

A correspondent of THE GAZETTE, introduced to its readers as "A Member of the New York Historical Society," in attempting to elucidate the vexed questions which have been discussed, under the heading of "the New Jersey Boundary," has signally succeeded in surrounding them all with a mystifying halo, well calculated to mislead the unwary, and those unaccustomed to the effect of the cross lights which historical research is apt to throw upon controverted subjects. In view, therefore, of the position the writer has felt called upon to assume, he deems it justly due to himself and historic truth, to endeavor to relieve whoever may be interested in the controversy, from the maze of error into which they are liable to be led by the gentleman's long and labored article, although, from its tone and temper, its personalities and most unwarrantable aspersions of motives, it might very properly be left unnoticed.

It is well, perhaps, to draw attention to the fact that this discussion originated in a positive announcement by Attorney-General COCHRANE that "the waters of the Hudson in their seaward current debouch "through both the narrows and the Kills;" that "the Hudson River "empties itself through its two mouths, the Narrows and the Kills, in- "to the Bay of New York;" and that "all the waters which lave Sta- "ten Island shores were, from the period of their discovery, known and "accepted, and should properly now be considered, the waters of the "Hudson River."*

These assertions were presented and urged in a manner and form exceedingly objectionable to Jerseymen; and the writer, in reviewing the paper through which they were given to the public, exonerated his native State from the opprobrium sought to be cast upon her, and, at the same time, showed conclusively that the waters referred to, west of Staten Island, could never have been recognized, and could not now be recognized, as part of the Hudson, inasmuch *as not a drop of the waters of*

* As Mr. Dawson has subsequently asserted that "General Cochrane made no such 'positive announcement' as Mr. Whitehead has presented in his rejoinder,"

the reader is referred to page 4, for Mr. Cochrane's own language iterated and reiterated as quoted in the text.

that river passes through that channel. The "Member of the New York Historical Society," who has come to the support of Mr. COCHRANE, does not pretend to controvert this truth; "but," he says, "the question 'is not as to the *physical facts* concerning those waters, but solely, the '*historical character* which belongs to them.'" Indeed! Is it not the province of history to elicit and treat of *facts*? Is any one class of facts less deserving of consideration than another? Can any amount of evidence, historical or otherwise, establish that which never did and never can exist? It was a "physical fact," in the days of Galileo, that the earth moved. Would the gentleman have us ignore that fact and believe it to have been a fixture in the universe then, and to be so now, because such was its "historical character" among the Inquisitors of 1633? If facts are to be set aside as intrusive in a historical discussion, then indeed, was he, of old, right, when he said "read me not history, for that I know is *false*." But, as the gentleman concedes that the waters of the Hudson do not flow between Staten Island and the main land, that point, *the only one really at issue*, may be considered satisfactorily settled; and attention may be directed to the theories upon which he bases his historical disquisition.

It is unnecessary to recapitulate the grounds upon which it is attempted to ignore, as of no legal force, the Royal grant of Charles II. and the transfer by the Duke of York to Berkley and Carteret in 1664, for, in reality, their existence, or non-existence, has little to do with the true merits of the case; but, it may be asked, if "physical facts" are expected to give way to the "historical character" of the discussion, why should not *legal doubts* be set aside for the same reason?—particularly, as we are told subsequently, (the Commissioners of New Jersey, in 1769, having the credit of originating the idea) that, in constructing deeds and grants "the principles of justice require that the intent and meaning of the parties should be the governing rule of construction," for the "intent and meaning" of the grants referred to are not questioned even by the Gazette's correspondent. But the first point he makes, after ignoring these grants, is, that the rights of John Lord Berkley and Sir George Carteret—and, of course, those claiming through one or both of them—"were derived SOLELY from the Royal Charter to the Duke dated "June 29th, 1674, and from the Duke's Lease and Release to Sir George Carteret in severalty dated July 28th and 29th, 1674, AND FROM NO "OTHER SOURCE WHATEVER."*

* In order that Mr. Dawson's arguments and statements may be fairly presented, the most material of them will be given in his own words. His objections to the

grants of 1664 are set forth in the following extract; why he wishes them set aside will become manifest directly.

"The reason for this rejection of the

On this the writer joins issue with him, not only as to the fact itself, but also, as to the conclusions based upon it, if it were a fact.

This restriction of the rights of the Proprietors of New Jersey and their assigns, is made to bear, first, upon their authority *to govern* the country which had been conveyed to them. It is said "no portion of "which prerogatives" [*those derived from the King*] "affecting the Realities "of the territory, was conveyed, or delegated by him to Sir George Carteret, in the Lease and Release of 'the said Tract of Land and premises' to which reference has been made, *nòr* in any other Instrument of "Conveyance or Delegation, either at that time, or at any subsequent "period." Now the very documents the gentleman refers to, the *Lease* and *Release* of the Duke, transfer New Jersey to Sir George Carteret, "IN AS FULL AND AMPLE MANNER AS THE SAME IS GRANTED UNTO THE "SAID JAMES, DUKE OF YORK, BY THE BEFORE RECITED LETTERS PATENT, "and all the Estate, Right, Title, Interest, Benefit, Advantage, Claim, "and Demand, of the said James, Duke of York, &c."* *That* is certainly emphatic language, and as, according to the dogma endorsed by the gentleman, "the intent and meaning" of parties must be considered, irrespective of facts, when both the facts and the meaning of the parties coincide, there should be acceptance, one would think, of the results thus confirmed; and it is rather significant of what he meant, that James should never have attempted himself, whatever his governors of New York may have done, to exercise, or even to claim, the government of the tract he thus conveyed. Even the acts of Andros, for which he had, apparently, authority in the *letter* of his commission, were repudiated by the Duke,† as the "the Member of New York Historical Society"

"Charter of March 12, 1664, and of the "Duke's Lease and Release of June 23 and "24, of the same year, as leading authorities in this discussion, may be very briefly stated. They are these:

"FIRST: There are very grave doubts of "the validity, under the established and "recognized law of England, of that Grant "which assumed to convey an estate which "was not only claimed by a foreign power "with which England was then at peace, "but one that was actually in the undisputed possession of that friendly power, "at the date of the Grant, and for many "months after the execution and delivery "of that instrument to the Duke of York.



"SECOND: Whatever legal rights the "Duke or his grantees, Berkley and Carteret, may have secured in the territories "or waters in question, by virtue of the "King's Grant of March 12, 1664, and the "Duke's Lease and Release of June 23 and

"24, of the same year, they were wholly "annihilated by the re-conquest and subsequent occupation of that territory and "those waters by the Dutch, under Commanders Bluckes and Eversten, in 1673; "and any rights which either the Duke of "York, or Lord John Berkley, or Sir "George Carteret possessed therein, after "the restoration of the same to the English, and the actual occupation thereof by "the latter, under Major Edmund Andros, "were derived SOLELY from the Royal "Charter to the Duke, dated June 29, 1674, "and from the Duke's Lease and Release "to Sir George Carteret, in severalty, dated "July 28 and 29, 1674, and from no other "source whatever."

* Grants and Concessions, p. 47.

† See E. Jersey under the Proprietors, p. 76; Grants and Concessions, p. 686 N. Y. Col. Doc., III., p. 286.

must know, if he is as familiar with the authorities as he professes to be. But if any thing more is wanted to confirm this view of what were his "intent and meaning" let the following extract from a document headed "CHARLES R." be read:

" * * * We being willing and desirous to encourage the Inhabiting and Planting of the said Province, and to preserve the Peace and Welfare of all our loving Subjects residing there, we do therefore hereby require you in our Name to use your utmost endeavours to prevent all Troubles and Disorders there for the future; and strictly to charge and command all persons whatsoever inhabiting within the said Province, forthwith to yield obedience to  the Laws and Government, which are or shall be there established by the said Sir GEORGE CARTERET, who hath the sole Power under us to settle and dispose of the said Country upon such Terms and Conditions as he shall think fit  and we shall expect a ready compliance with this our Will and Pleasure from all persons, &c., &c.,"*

This letter, which was addressed to John Berry, Deputy Governor under Carteret, may be one of those facts that are to be treated "historically," and robbed of its force, because it bears the date of 13th June, 1674, a few days prior to the renewed Letters Patent to the Duke of York; but it is conclusive as to what were the "intent and meaning" of the first conveyance, whose existing vitality it confirms; and also, as to the sentiments of all parties concerned about the time the second grants were perfected. But if doubts should be entertained in regard to this they will be expelled presently, and in the meanwhile attention is asked to one document which it is rather remarkable should have been overlooked by the gentleman. Every true historical enquirer should hesitate to attribute to an opponent *an intention* to suppress any fact or document essential to the full consideration of any subject, and the course of the Gazette's correspondent in that respect, therefore, will not be followed; but in *New York Colonial Documents*, Vol. III.—a volume from which he quotes—on page 265, will be found this letter from the "honest and wise" Sir William Jones, "the greatest man of the law" in his day, as he is styled by Burnet.†

"28 July, 1680.

"I doe hereby humbly certify that haveing heard wt hath beene insisted upon for his Royll Highnesse to make good ye legallity of ye demand of Five pr cent from ye inhabitants of New Jersey; *I am not satisfied* (by any thing that I have yet heard) *that ye Duke can legally demand that, or any other duty from ye inhabitants of those lands.* And yt wch makes ye case the stronger *against his Rll Hss* is, that these in-

* Grants and Concessions, p. 49.

Memoirs of his own Time (Second Ed.), Vol. I., p. 445.

"habitants clayme undr a graunt from his Royll Highnesse to ye Lord
 "Berkley and Sir George Carteret in wch graunt *there is noe reservacôn of*
 "*any profitt* OR SOE MUCH AS OF JURISDICÔN. W. JONES.

It is evident that there was no "Member of the New York Historical Society" in those days to enlighten Sir William. A reference to the volume from which the letter is quoted will show the willingness of the Duke of York to comply with the "intent" of his grants as interpreted by this legal giant.

The second point made by the "Member" of the New York Historical "Society" is that, although James conveys "all Rivers, Mines, Minerals, "Woods, Fishings, Hawking, Hunting and Fowling, and *all* Royalties, "Profits, Commodities and Hereditaments *whatsoever*, to the said Lands "and Premises belonging or appertaining: with their and every of their "Appurtenances, &c.," yet "*Islands*," "*Soils*," "*Harbors*," and "*Marshes*," which were also specially named in the Letters Patent from the King to the Duke, *are not mentioned* and THEREFORE—the "historical character" of the missing items requires it to be said—"The Tract of Land and "Premises which were thus conveyed to Sir George Carteret and the "rivers belonging or appertaining thereto, were and are, historically, all "that then formed, and now form, the Province or State of East Jersey; "and whatever tracts of land and 'whatever rivers belonging to or ap- "pertaining thereto,' which were not thus Released, and *all* the Islands, "Soils, Harbours, Waters and Marshes which were between Connecticut "River on the East, and Delaware River on the West, *whether within or* "without the limits of *East Jersey*, 'together with the river called Hud- "son's River' and the several prerogatives of Sovereignty which had "been separately and specifically conveyed to the Duke by the King, RE- "MAINED WITH THE DUKE ENTIRELY UNIMPAIRED."

Poor East Jersey! How desolate! *No islands, no soils, no harbors, no waters, no marshes, no quarries*, (for "quarries" too were omitted), ALL "retained by the Duke of York as part of his Colonial possessions, "and are still to be considered *historically* [!/] waters and lands of the "State of New York." Mr. COCHRANE concluded his paper by propos- ing merely to have Raritan Bay "expunged from the Map, and expelled from our physical geography as a New Jersey heresy," but his coadjutor seems to consider it an easy matter to absorb the whole State. Such statements do not call for refutation. They are simply and preposterously absurd, having neither facts nor "intent" to sustain them, as JAMES HIMSELF, as we shall see, TESTIFIES UNDER HIS OWN HAND AND SEAL.

It will have been observed the assertion is broadly made that no portion of the prerogatives granted to the Duke by the Letters Patent of June, 1674, were transferred to the Proprietors of New Jersey in the sub-

sequent *Lease and Release*, "nor in any other Instrument or Conveyance or "Delegation, either at that time, or at any subsequent period;" and that the right of the Proprietors were "derived SOLELY from the Royal Charter "and the Duke's *Lease and Release* of 1674 and from no other source," and whatever was not by them, in express terms conveyed, "remained with the Duke entirely unimpaired." If all this were so, which the writer does not admit, and Sir William Jones denied, the Duke's right to dispose of those "prerogatives," and those "islands," "waters," "quarries" &c., as he might think proper was certainly unquestionable. Now THAT VERY THING HE DID by his conveyance to the twenty-four Proprietors of East Jersey on the 14th of March, 1682-3. With his usual courtesy, the "Member of the New York Historical Society" accuses the writer of giving a "mutilated" extract from this deed when referring to it on a previous occasion,* although the words he particularly dwells upon, as

* This was in a note to the review of Mr. Cochrane's paper referring to the proceedings at a meeting of the Council of New York, at Fort James, Feb. 16, 1683-4 (V. Y. *Minutes of Council Liber*, 1683-ss) in which it was said:

"At that Council, Mr. Recorder, afterward Attorney General, Grahame, said—"he believed in that clause, 'whole entire "premises,' [conveyed by the previous "grant to Berkley and Carteret] was to be "understood only the intire tract of land, "and the other clause, 'as far as in him "lyeth,' made a doubt whether the Duke "had authority so far:" and while in doubt it was suggested that a remonstrance should be sent to his Royal Highness, showing the "inconvenience of suffering East New Jersey to come up the river." The question involved was evidently the extending of East New Jersey "up the river," opposite Manhattan Island. No doubts seem to have been entertained as to the effect of the grant upon Staten Island and surrounding waters; for the Duke, as if to set at rest all questions growing out of the formerly expressed boundaries, not only repeated them and conveyed the eastern moiety of "the whole intire premises," but added, "TOGETHER WITH ALL ISLANDS, "Bays, &c.," words not in the original grant [to Sir George Carteret], and inserted the further significant clause "As also "the free Use of all Bays, Rivers, and "Waters, leading unto or lying between "thesaid Premises, or any of them, in the "said Parts of East New Jersey, for Navigation, free Trade, Fishing, or otherwise." "wise."








That these words were considered by the

Council as covering Staten Island and its waters, is conclusive from the fact that Captain John Palmer, the largest holder of lands on Staten Island under New York grants—one of the Council subsequently, and present at the meeting referred to by invitation of the Governor—not esteeming his property there safe without a title from the proprietors of East Jersey, immediately thereafter applied to them for patents, and on the 26th May following, obtained them for several tracts of land, covering more than 5,000 acres." (E. J. Records, Vol. 1, Liber A p. 185.)

Mr. Dawson considers this proceeding of Capt. Palmer as a precautionary measure merely, and "no evidence that he considered the pretended title thereto of the Proprietors as worth a straw"—and he thinks the Proprietors themselves considered a compliance with his request "little "better than a farce," because, as he states, they said, "it may be of no ill consequence, but rather of service in our "claim to that island."

Mr. Dawson may have all the advantage accruing from his objection, although it is possible, could a reference be had to the lost minutes, that the matter would be presented in a clearer light, but it must be borne in mind that this application from one intimately associated with the authorities of New York, was made fifteen years after Staten Island is said to have been "adjudged" to that Province. Gov. Dongan himself is said to have taken out a Patent for the lands he held on the island, (See Proprietor's Memorial to Gov. Morris, Oct. 12, 1719.)


left out—"so far as in him lieth"—were actually made the subject of comment. It is not usual to quote the whole of a document every time a portion of it may be pertinent to the subject under review, but the gentleman shall be favored in due time with an explanation of the phrase he refers to, as well as with further extracts from the grant itself.

In that document the Duke sets forth, not only that he *had* on the 23d and 24th June, 1664, conveyed New Jersey to Berkley and Carteret, (*the legal force and validity of which conveyance he affirms*)* and subsequently executed the other grants which have been referred to, *expressly*, so he says, *as he had received it from the King*,† with its "islands," "soils," "marshes," &c.; but, also, that, in consequence of the partition made by the grantees of the said tract and subsequent sale by Sir George Carteret of the eastern moiety, he grants and conveys anew to the twenty-four Proprietors, in whom the title then rested, "their Heirs and Assigns all that Tract Share and Portion and all those Parts Shares and Portions of all that entire Tract of Land, and all those entire Premises so granted to his said Royal Highness, * * * called by the name of East New Jersey together with  all ISLANDS BAYS Rivers WATERS Forts Mines Minerals QUARRIES Royalties Franchises and appertenances whatsoever to the same belonging, or in any wise appertaining, &c.,  as also the  free use of all Bays Rivers and Waters leading unto or lying between the said Premises, or any of them, in the said Parts of East New Jersey, for Navigation, free Trade, Fishing or otherwise  To HAVE AND TO HOLD &c to improve and plant the said Premises with People and to exercise  all necessary Government  therein, whereby the Premises may be better improved does and doth by these Presents give grant assign and transfer unto the said," [naming the "twenty-four"] "their Heirs and Assigns, Proprietors of the said Province of East New Jersey aforesaid, for the time being  all and

*"By several good and sufficient Conveyances and Assurances under his hand and seal duly executed," is the language used.

† Referring to the Lease and Release of July, 1674, he makes his "intent and meaning" perfectly manifest. He says that the King having granted to him on 29th June, 1674, "the said tract of land and premises" conveyed to Berkley and Carteret in 1664—he on the 29th July, 1674, "did grant and convey the said tract of land and premises to the said Sir George Carteret," &c. There was therefore, no *intention* of curtailing any of the perfections of the first grant by the omission of the words "islands," "marshes," &c.—(See the Release

in *Grants and Concessions*, pp. 141-150.) Moreover, the Supreme Court of the United States in its opinion in the case of *Martin vs. Waddell*, says "The last-mentioned grant [1674 from the King to the Duke] is precisely similar to the former in every respect," and further "The grant of this territory, known as East New Jersey, * * * was transferred to twenty-four persons, * * * who, by the terms of the grant, were invested within the portion of the territory conveyed to them, with ALL the rights of property and government which had been originally conferred on the Duke of York by the Letters Patent of the King."

"every such AND THE SAME Powers, Authorities, Jurisdictions, Governments
 "and other Matters and Things whatsoever which by the said respective recited
 "Letters Patents or either of them are or were granted to be exercised by his
 "said Royal Highness his Heirs Assigns Deputies Officers or Agents in or
 "upon or in Relation unto the said Premises, &c." 

What rights of property, what prerogatives, pray, are retained here by the Duke, to become "historically" or in any other *Pickwickian* sense, united to New York? And see, too, what Charles himself said in confirmation of this last mentioned conveyance "His Majesty doth hereby
 "declare his Royal Will and Pleasure, and doth strictly charge and com-
 "mand the Planters and Inhabitants, and all other Persons concerned in
 "the said Province of East New Jersey, that they do submit and give
 "due obedience to the Laws and Government of the said Grantees their
 "Heirs and Assigns, as *absolute Proprietors and Governors thereof*, &c.*" This was under date of November, 1683. Need any thing more be said to show how entirely at variance with the facts is this "historical" theory.

The writer's mode of disposing of Mr. COCHRANE's arguments, based upon a passage from Ogilby's *History of America*, does not meet the approval of the "Member of the New York Historical Society;" and it is probable no greater satisfaction will be felt with the opinions he may express respecting the use made of that work by the gentleman himself.

It is somewhat remarkable that such peculiar stress should be laid upon a single paragraph written by one who was never on this side of the Atlantic, whose ears were open to any "old-wives fables," and his pen as ready to record them, and whose sole authority for the details of his map was the imperfect ones of Vischer and Vander Donck; but, in a theory which discards "physical facts" it may be consistent to accept, as all sufficient authority, one whose knowledge of the waters he describes warrants him in presenting Long Island Sound as *one* of the mouths of the Hudson!! But as his "elegant map" *leaves out* all appellations for the waters within Sandy Hook, and for convenience has the name of "the Groote River" and its numerous aliases *out at sea*, just as it places "Zuydt River" *off the capes of Delaware*, Ogilby is considered an authority of the first grade, *omission* to confer distinctive titles upon the waters which are the subject of discussion being regarded by the gentleman, as it was by Mr. COCHRANE, much better evidence of the "intent and meaning" of parties than positive conferment of definite appellations. It is probable, however, that had his map been on a larger scale, he would

* Grants and Concessions, p. 151.

have given to the waters within Sandy Hook their specific title, as did Vander Donck.*

In this connection the writer feels bound to notice, and pointedly condemn, the unwarrantable accusation brought by the gentleman against the New Jersey Historical Society, of having mutilated, for sinister purposes, the portion of the map of Vander Donck in their first volume of their "*Collections*." He says "while the words 'Port May and Godyn's Bay' have been VERY DISTINCTLY inserted in the proper place, the names of 'the 'GROOTE RIVER' OUTSIDE of the former have BEEN STUDIOUSLY OMITTED, and Vander Donck has been FORCED to say nothing whatever concerning the Hudson, either of its mouth at Sandy Hook, or elsewhere." The capitals and italics are the gentleman's own, and a cause which seeks for aid through the effect of such imputations must be inherently weak. *He knows* that the map inserted in the volume referred to is only one-third of the original—just so much of it as could be brought within the limits of an octavo page, four inches by seven—and the reason why the names he refers to were not on it, was without doubt, the same with that—the writer has had the charity to suppose—which prevented Ogilby's inserting the names for the bay, namely, the "physical fact" that there was no room for them if the character of the map as a *fac simile* (as far as it went) were preserved. The implication, that the New Jersey Historical Society "had quailed before the testimony" afforded by the original map to the North River's emptying into the ocean, is simply ridiculous.† It may be safely affirmed that, the Society will never be driven to ignore "physical facts" to establish any historical theory.

The Gazette's correspondent has devoted much time and labor to verifying an opinion, expressed by the writer on a previous occasion,‡ that "with a little research a few like instances [to those educed by Mr. COCHRANE] might be discovered," of the application of the general title of

* Mr. Dawson regards the use of Ogilby's Map by the Commissioners of 1769 and the writer's reference to it in a paper on the Northern boundary, as conflicting with the opinions of its value expressed in this controversy. In reply to this it is sufficient to say that few maps, books, or men, are altogether worthless; on some point each may be perfectly reliable. The value of Ogilby's map to the Commissioners of 1769 consisted in its corroborating, with Vander Donck's and Vischer's, their views as to the position of the North-western point of intersection with the Delaware,—but the advocates of New York claims then, could not be made to think the evidence of the map of any account. (*See N. J. Brief. pp. 27-29.*)

† The utter recklessness of this charge is strikingly apparent when the fact is recalled that, when the map referred to was issued by the New Jersey Historical Society, the boundaries between the two States had been definitely settled by the inter-State agreement for thirteen years, and neither the Historical Society, nor any individual in New Jersey, desired or expected that the discussions which had preceded that agreement should or would be revived;—nor was it presumed that it would ever be necessary to collect (or manufacture, as is implied,) documentary evidence in advance, to meet an attempt on the part of New York to set aside that agreement.

‡ See page 7.

"Bay of the North River" to the expanse of waters between Sandy Hook and Staten Island. He *has* supplied "a few like instances," three or four in number, which establish nothing new, and do not controvert the fact that, what thus occasionally received a general appellation was at the same time considered, from its characteristics, devisable into smaller portions bearing specific titles. He has, besides, made diligent search among the contents of "Old Time's drag-net," and rescued from oblivion, perhaps, a score or more of extracts to prove—what? that the waters of the Hudson enter into the ocean at Sandy Hook.

It is a favorite mode of procedure, with some disputants, to set up some fanciful and weak edifice of their own, which they would have the world believe is an antagonist's selected stronghold, and then to take great credit to themselves for demolishing it with ease. Such seems to have been the course of the "Member of the New York Historical Society," for the writer would remind his readers, that there has been no attempt on his part to controvert the "physical fact" that the waters of the Hudson mingle with those of the ocean at Sandy Hook.* *That* is a truth recognized by the terms of all the grants which have made the eastern boundary of New Jersey "the main sea and Hudson's River," and he is not aware of any other way in which the two can meet, unless, the gentleman's favorite authority, Ogilby, be followed and the junction be effected *via* Long Island Sound—the *other* mouth of the river. It is the *homogeneous* character of the waters filling the "Bay," and losing themselves in the Atlantic at that point, which is denied; and *that* he believes is a question impregnable to the attacks of any "historical" theory. But their dissimilar character is one of the "physical facts" which Mr. COCHRANE and his coadjutor would ignore; the Hudson and the Hudson *alone* is to be recognized in those waters; the peculiar influences to which it has been subjected in its passage to the ocean having very materially increased its powers of absorption, so that nothing in the shape of water can withstand its voracity—so fittingly symbolized by its "two mouths."

Notwithstanding that Hudson himself, in the "narrow river to the westward" having different tides and currents, discovered a stream distinct from the river he subsequently ascended—although from that time to the present, that distinction has been recognized by the retaining of the "baptismal names" conferred at first, such as "Kill van Kol;" "the Kills;" "the Sea," or "the river which parts Staten Island and the main;"

* Yet Mr. Dawson accuses the writer and the New Jersey Historical Society with *mutilating* Vander Donck's Map *twenty years ago*—a map well-known and accessi-

ble to every one, in order that it might not be ever thereafter brought forward to prove—what they have never denied!

"the Sound;" "Raritan Bay;" "Sandy Hook Bay," &c., names called for by the position and physical character of the waters; and that, too, without any deviation from the practice, excepting by a few individuals, in a few instances, during the period when the New York authorities were prosecuting their *fruitless* attempt to deprive New Jersey of a sea port:—notwithstanding that *every map*, conferring any title upon those waters conforms to this prevailing original nomenclature, or confers other distinctive appellations, entirely at variance with the idea that they were ever considered identical with the waters of the Hudson:—although *the Staten Island deed*, which, from its locating the island "*in Hudson Ryver*" is so prominently presented as confirming "the character of the "waters in question," although even that (despite the forced paraphrase with which its terms are accompanied in the article of the Gazette's correspondent)* places "*ye Ryver*" only on "*ye North*" and has upon "*ye South ye Bay*"—in the face of these and various other facts, both physical and documentary, the Gazette's correspondent gravely asserts that "the *leading* Cosmographers of the time, both English and Dutch" [meaning Ogilby and Montanus, *one copying the other*, and both believing that in the New Netherlands could be seen "a kind of Beast which hath "some resemblance with a Horse, having cloven Feet, Shaggy Mayn, one "Horn just on their Forehead, a Tail like that of a wild Hog, black "Eyes and a Deer's Neck," that fed "in the nearest wildernesses," together with "Buffles" or "Elands * * * subject to the falling sickness" &c., &c.,† that these *leading* Cosmographers] *concurred in the opinion that the Hudson discharged its waters through two mouths, the Narrows and the Kills;*" whereas there is not a particle of evidence that they had ever heard of either passage. Take the gentleman's own adopted version of the extract from Montanus so often referred to, it reads thus:—"Among the streams the Manhattan, or Great River, is by far the chiefest, as with "two wide mouths *washing the mighty island Matouwacs* [not Staten Isl- "and, be it observed] it empties into the Ocean. The *Southern mouth* is

* THE TERMS OF THE DEED.

"All that Island lyeing & being in Hudsons Ryver Comonly called Staten Island, & by the Indians *Aquehonga Manack-nong*, having on ye South ye Bay & Sandy point, on ye North ye Ryver & ye City of New York on Manhattans Island, on ye East Long Island, & on ye west ye Main land of After Coll, or New Jersey,"

THE PARAPHRASE,

"All that Island *lying & being* in *Hudsons Ryver*;" and bounded on "*ye South*" [by] *YE BAY & Sandy point, on ye North* [by] *YE RYVER & ye City of New York*

"on Manhattans Island, on *ye East*" [by the River "*IN*" which it was and] "*Long Island, & on ye West*" [by the River "*IN*" which it was and] "*ye Main land of After Coll, or New Jersey;*"

† Ogilby, p. 172. So desirous were these "leading cosmographers" to give the *correct* delineations of what they describe, that they supply an engraving of the beast mentioned in the text, horn, tail, and all, and it is to be presumed that we are expected to believe, in consequence, that it existed "historically."

"named Port May, or Godyn's Bay; midway lies the Staten Island and little higher the Mannhattans," &c. What is there in this passage to warrant any such statement as that above, as to the opinion of these "leading Cosmographers?" It is impugning the intelligence of the settlers of New Netherland to make these writers exponents of the extent of their knowledge respecting the province. As early as 1656, Vander Donck, after having examined the localities for himself, placed *the* mouth of the Hudson at its junction with the East River, and Egbert Benson and the other New York Commissioners, in 1807, frankly acknowledged that such was the "common conception in regard to it;" and, by the way, those gentlemen were so little satisfied with the *modern* "historical character" of the waters West of the island that they labored to establish *that* channel as *an arm of the "main sea,"* connecting with Hudson River in the upper bay.* In January, 1664, the Chamber at Amsterdam, was so much better informed about the River, than Montanus was seven years later, that we find it corresponding with the Directors and Council at New Amsterdam in relation to the "defensible condition of *the* mouth of the "river, both on Staten Island and on Long Island,"† and it is evident that, ten years after Montanus wrote, the localities were not much changed from what they were in 1656 and 1664, as we find Governor Andros, in December, 1681, mentioning Staten Island as situated "att *the* entrance "or mouth of the River to New Yorke."‡

In this connection it must be noticed that the "Member of the New "York Historical Society" *has failed to exhibit a single document, or name a single map that confers upon the waters west of Staten Island the name of Hudson River,* with the few exceptional papers, also adduced by Mr. COCHRANE, which have already been made the subject of comment,§ (in due time they will be again considered,) occurring nearly a century after the settlement, and having no value as proofs. But he should know, as well as the writer that, so far from all intelligent well-informed persons, English, Dutch and American in 1674, considering the Hudson's River as flowing on *both* sides of Staten Island, "Hudson's narrow river to the westward," and its connecting channel southward were *uniformly* referred to by other names; among the "intelligent, well-informed persons" doing so, being Governor Nicolls, who speaks of both as "the sea between Staten Island and the main," and was so ignorant of the opin-

* The original draft of the papers emanating from the New York Commissioners are in the New York Historical Society's Library, and it is interesting to note the corrections and alterations they received before being submitted to the scrutiny of the

gentlemen from New Jersey. (*Boundary Papers. Vol. IV.*)

† New York Colonial Documents, Vol. II., p. 218.

‡ Ibid. Vol. III., p. 310.

§ See page 8.

ions of "leading Cosmographers" as actually to make the northern boundary of some land on Staten Island "Hudson's River AND the Kill van Cull."* Governor Andros even (IN DOCUMENTS THE GENTLEMAN HIMSELF QUOTES) calls the one "After Cull River," and the other "the Great Kill."†

The reader's patience will not be tried by the barren enumeration of other grants and other documents showing the continuous use of this nomenclature. The records of both States abound in proofs beside those the gentleman himself has furnished; and, without consulting many other works, an examination of the "*Calendar of Historical Manuscripts in the office of The Secretary of State at Albany*" cannot but excite surprise that he should have ventured upon the assertion that "from an early day—as early as 1643, the waters of what we call * * * * "The Kills' * * * were considered and disposed of as waters of Hudson's River—and that, *without a single adverse witness*, the same opinion prevailed and the same action was continued until the surrender of the Colony to the King of Great Britain and its transfer to the Duke of York in July, 1674." But having on a previous occasion gone over this ground,‡ the writer deems it unnecessary to traverse it again. Before passing to another topic however, he must be permitted to notice the unwarrantable assertion that "the Map of the settled portion of East New Jersey in 1682" in "East Jersey under the Proprietary Governments" places "Constable's Hook" at the "*southwestern extremity of the neck, [Bergen Neck] to which point the waters of the Hudson would have been necessarily recognized on his [the writer's] own authority, had he told 'the whole Truth' of the matter.*" This, to say the least, is in worse taste than the accusation brought against the New Jersey Historical Society, of *studiously suppressing* the title of Hudson's River from the fac simile of a part of Vander Donck's map given in the same volume. Others are left to designate it as their sense of propriety may dictate.

"Constable's Hook" or "Point" will be found in all maps, going sufficiently into detail, to be the name from the earliest times conferred upon the northern point of the *eastern entrance* of the Kill van Cull. The Gazette's correspondent knows this fact and understands the position of the "Hook" perfectly. The youngest tyro in geography well knows that names are placed above, or below, on the left or on the right of the localities to be designated as convenience prompts; and it will scarcely be believed that, the above grave charge is based upon the circumstance that the engraver

* Grant to Bollen & Co., Dec. 24, 1664.

† Warrants referring to Gov. Carteret's pigs that had strayed across to Staten Isl-

and, Sept. 23d, 1675—and to Capt. Billop's grant, March 25, 1675.

‡ See page 11.

of the map placed the name on the *left* of Constable's Hook, extending of course *from* the southwestern extremity of the neck *towards* the Hook. If such a statement as that above quoted is warranted on such grounds, it might with equal propriety be said that Vander Donck located "New Amsterdam" on the west side of the Hudson, because the name stretches across New Jersey; or that Mr. Brodhead intended to place "Paulus Hook" on Newark Bay, or "Communipau" on Staten Island, because their names commence at these points on his map, or that the engineers who prepared the sketch of the Harbor of New York for the Coast Survey Report of 1857, in placing "Constable's Hook" in a similar position to that which the words occupy in the map first referred to, had some reference "to the claims of modern New Jersey." All the proofs of the Hudson's "debouching" through the channel between Staten Island and the main, which can be deduced from such puerile assertions and arguments, the "Member of the New York Historical Society" is at liberty to appropriate;* and also, all he may find in the fact that Bergen County

* Mr. Dawson, considering himself particularly qualified to discern the "intentions" of others, presumes so far as to assert, notwithstanding what is said in the text, that the writer *intended*, by his map of 1846, to establish the location of Constable's Hook at the *western* entrance of the Kill van Kull, and to him:

"It does not appear proper, that such a deliberate attempt to mutilate the testimony afforded by the ancient records of East Jersey, in order to sustain a trumped up claim to the waters in question, should be allowed to pass unexposed; and the reputations of those who have been thus guilty of tampering with the evidence, in order to promote such a claim, must necessarily abide the legitimate consequences of such exposure."

That "exposure" being effected in his estimation by a quotation from Scot's "Model of Government" and "Smith's New Jersey" and "Gordon's Gazetteer;" "three single gentlemen in one," Gordon copying Smith, and Smith copying Scot, and Scot himself being indebted to "Captain Nicolls, Secretary for the Duke" for the information: who says,

"To goe back to the South part of *Berghen neck* that is opposite to *Staten Island* where is but a narrow passage of water, which ebbs and flows between the said Island and *Berghen Point*, called Constables Hook."

"Berghen Point" was doubtless then, *as now*, used frequently as a general appellation for the whole of the southern part

of the Peninsula between the Hudson and the Hackensack rivers, extending to the Kill van Kull; and both Smith and Gordon rightly interpreted Scot, in considering his statement that "there are other small plantations along that neck to the east between it [Bergen Point] and a little village of 20 families, &c.,"—to refer to the settlements along the western shore of the bay between Constable's Hook and Communipau; "Berghen Point" being used by Scot as identical with what was *then* and is now known as "Constable's Hook" or "Constable's Point."

"The reader will perceive," says Mr. Dawson, "that Constables Hook, IN AND 'ABOUT THE YEAR 1682,' *was not on the harbor of New York*, as Mr. Whitehead pretends in his *Rejoinder*, but at the *entrance to the Achter Col, or Newark Bay*; that the Map of the settled portions of East Jersey, about the year 1682, by W. A. W., WAS AND IS, THEREFORE, PERFECTLY CORRECT IN THUS DESCRIBING IT; that in March 1682-3, when the Assembly of East Jersey passed the Act for dividing the Province into four Counties, its recognition of the waters which separated Staten Island from the main, seaward, as far as what was THEN known as Constables Hook as Hudson's river, virtually conceded all that New York has ever demanded; and that Mr. Whitehead's grave denial of these well-sustained facts and the impeachment of his own Map, are not sustained, either by contemporary Maps or contemporary statements."

was "to contain *all the settlements* between Hudson's river and Hackensack River, beginning at Constable's Hook, and so to extend to the uppermost bounds of the Province northward, between the said Rivers." Those *settlements* being "Pembroke," "Communi-paw," "Paulus

What Mr. Dawson means by "contemporary maps" is not known, *but not one* has been found that does not place Constables Hook or Point at the eastern entrance of the Kill van Kull. And as to "contemporary statements" the explanation of Scot's language, given above, shows that it is far from being established that he intended to place the Hook where Mr. Dawson wishes it.

But let us see if at any other time than 1680, (which was the date of the Secretary's description, not 1682) or by any other authority it was so located. Taking our first step backward eighty-five or ninety years, we find that Sauthier's Map "*compiled from actual surveys deposited in the Patent office at New York*," places the Hook or Point in its present position. This was published in 1779, and from 1776 to 1777 we have different editions of the maps of Montross and Pownall confirmatory thereof. Again, let us go back one hundred and fifty years or more, and we find that the bounds of Bergen County began "at Constables Hook and so run up *along the Bay and Hudson's River* to the partition point, &c.," returning "down the Pequannock and Passaic Rivers to the Sound, and so to follow the *Sound to Constables Hook*." (*Nevill's Laws*, 1., p. 12; *Allinson's Laws*, p. 11, January 21, 1709-10.) Taking another step of nearly half a century, to Feb. 10, 1686, we find a tract of land laid out on Staten Island, beginning at the water side opposite to ("against") Constables Hook, extending *westward* along the Kill van Kull. (*Albany Land Papers*.)

The position of the Kill van Kull, it is believed, has never been disputed; it has been allowed to remain where the "meaning and intent" of all parties placed it at first, and we see here, that in 1686 it ran *west* from Constable's Point. Let us next take Mr. Dawson's strongest argument, the act of March, 1682-3, which said that "Bergen County [was] to contain *all the settlements* between Hudson's River and Hackensack River, beginning at Constables Hook and so on to extend to the uppermost bound of the Province northward between the said Rivers." (*Leaming & Spicer*, p. 229.) As the settlements were all north of the true position of Constables Hook, along the shores of the bay, it requires a cosmo-

grapher as imaginative as Ogilby to locate it any where else from this description.

But let us take another step backward to 1674, and on Feb. 27, "we find Samuel Edsall mortgaging Constables Hook "situate on the west side of the North River"—(*N. Y. Col. MSS.*, XXIII., p. 312.)

Another step takes us back to 1658, Jan. 30, to the Indian deed for the Bergen Peninsula, the lines of which, after running *westward* from "the great rock above Wiehaecken," on their *eastward* return "run the *Kill van Kull along unto Constables Hook*" and from the Hook to the place of beginning, (*Calendar of Hist. MSS.*, Albany p. 190.) and a contemporaneous English version gives them "therefrom [above the island and Sikakes] thence to the *Kill van Coll*, and so *alongst to the Constables Hook*."—(*E. J. Records Liber.*, I., p. 3. *East Jersey under the Proprietors*, p. 20.)

There is a "physical fact" also to be overcome, of which Mr. Dawson does not seem to be aware. The tract called Constables Hook is described in the mortgage of Edsall, in 1674, alluded to above, as *an island*—which will be looked for in vain in the tract of Bergen Neck, where he would locate it, but if he will consult Clark & Baco's "Topographical Map of Bergen County," he will find that, what is now known as "Platty Creek," and the adjoining marshy ground, *formed, and to some extent still forms an island* at the eastern entrance of the Kill van Kull, the true location of the Hook.

As to the point which Mr. Dawson wishes to establish, viz.: the junction of Hackensack and Hudson Rivers at his site for the Hook, that is effectually disposed of by the unvarying description of the waters between it and Staten Island as the Kill van Kull, through all times from the first reference to the Hook that has fallen under the writer's notice, which is in a grant to Jacob Jacobson Roey in 1646 *Dutch Patents*, Albany, G. G., p. 141.

With these "well-sustained facts" before him, the reader can form his own conclusions as to whether Constables Hook was ever located, "historically" or otherwise, at the entrance to Newark Bay and whether the writer could have "intended" placing it there on his map.

Hoeck," "Bergen," "Hobuk," and perhaps one or two others, the nearest, "Pembrepock," being two or three miles *north* of Constable's Hook.

Allusion has been made to the unbroken testimony borne by MAPS to the fact that distinctive appellations have always been borne by the waters in question, and that such appellations have never indicated any identity with Hudson River; and attention is now directed to the following schedule of a series of the more prominent among them, covering the whole period from 1614 down, upon which they appear, whenever *any* names are conferred.

1614. Five years after the discovery of the River by Hudson appeared the first map of the country of which we have any knowledge. On it the waters are not named.

1616. Two years later we have the "Carte Figurative" referred to by Mr. COCHRANE. On this, what is now known as Raritan Bay, has its distinctive title of "Sand-Bay."

1621. A Map of "Americæ Septentrionalis Pars" was published by A. Jacobz, on which the same title appears for that bay.

1631. An Italian Map by Lucini, supposed to be of this date, has on it "Sand Bay Golfo," to designate the same waters.

In 1648, as appears from "Plantagenet's New Albion," (p. 48) the bay was known as "Sand-bay Sea;" and subsequently, as has been seen in this discussion, it became known, in whole or in part, as "Coenraed's Bay" (as in the map of Joannes Jansones, of uncertain date,) "Port May," "Godyn's Bay," &c., and in—

1656. On Vander Donek's Map, the waters between Sandy Hook and Staten Island are named "Port May or Godyn's Bay;" and so are they on a somewhat later Map by Matthæi Seutteri.

1671. Ogilby's and Montanus's Map gives no names to the waters within Sandy Hook, but by titles outside indicates that the Hudson River there empties itself into the Ocean.

1683. In this year John Reid was sent from England for the purpose of surveying a portion of East Jersey, and we have the result of his labors, in part, in "*A Mapp of Rariton River, Milstone River, South River, Raway River, Bound Brook, Green Brook, & Cedar Brook, with the Plantations thereupon, &c., &c.*" On this valuable illustrative document, appearing thus opportunely, being contemporaneous with the last grant of the Duke of York, to the Twenty-four Proprietors, we have "The Sound" between Staten Island and the Main, and for the waters South of the Island, "Part of Rariton Bay."

From the appearance of Reid's Map, down to the Revolution, on *all* maps giving any titles to these waters, the same system of nomenclature is followed; on some of them "Sandy Hook Bay" appearing in connection with "Raritan Bay." The best of these were the following:

1760. Captain Holland's Map of "New York, New Jersey and Part of Pennsylvania;" and in—

1776. Governor Pownal's improved edition of the same map. On both of these we have "Raritan Bay," and on the last, in addition, "Sandy Hook Bay," "the Sound," and "the Kills."

1779. With this year came the highly finished Map of the "Province of New York," by Claude Joseph Sauthier, "*compiled from actual surveys deposited in the patent office at New York*," on which we find that "the infectious waters of the Raritan" are allowed full sweep, as well as "Sandy Hook Bay," and "the Kills;" and "York Bay" has the position of the present "Lower Bay."

In 1778 and again in 1780 the French government issued correct and well executed maps of these waters, upon which appear the same intrusive titles.

It is unnecessary to trace this series of proofs to a later period. It is evident that these distinctive appellations did not originate in modern times, were not the result of "accumulating ignorance," as asserted by Mr. COCHRANE, or of any "design" except to name distinctly, and distinguish properly the waters to which they apply; and if not universally acknowledged, as correctly applied, why is it that *not one map* can be found, the maker of which, has been willing to stultify himself so far as to identify those waters with Hudson River, by conferring its name upon them? All *geographers* "leading" or otherwise, have thus endorsed the "physical fact" that Hudson's River "debouches" only through the channel eastward of Staten Island; and one, if not more—Homann of Nuremberg—who lived about the middle of the seventeenth century, with a "design," probably, to sustain "the claims of modern New Jersey," actually colors Staten Island with the same tint he gives New Jersey.* A sensible fellow was Homann: he believed in "physical facts," and did not adopt for a text book either Montanus or Ogilby.

Whether previously initiated, or not, into the mysterious processes of absorption, by which sundry portions of New Jersey, as such, have disappeared from view, every one attending to this discussion will have seen that a failure to establish the existence, "historically," of what the natural configuration of the land and water has made *physically impossible*, necessarily involves the destruction of any theoretical attempt to account, on moral or legal grounds, for the possession of Staten Island by New York, except through the concessions of the inter-State treaty of 1833. So clear are the terms of the grants as regards *all lands west of*

* See Vander Viejde's Maps, 1763, in N. Y. His. Soc. Library.

Hudson's River that, unless it can be made to run "historically" where it does *not* run naturally, there cannot be a shadow of pretence to title save by the effect of that instrument. Hence the anxiety to establish that point; but, in order to lessen the effect of incontrovertible facts which prevent such a result, many irrelevant matters have been introduced, to confuse the enquirer after truth, leading to a wonderful array of so-called authorities having little or no reference to the simple proposition of Mr. COCHRANE, the refutation of which is admitted. To enter upon an examination of all these would entail upon the writer a vast amount of labor, with no possible accruing advantage to the reader. Two or three points, however, thought by the Gazette's correspondent to be of particular importance will be noticed, to show how, in reference to them as to everything else, he has failed to establish his views.

He raises for example another flimsy structure, and making a grand demonstration, brings column upon column to bear upon it, as if the fanciful assumptions and imaginary positions he combats as entering into its composition, originated with, or were verily taken by Jerseymen; expending an immense amount of labor in proving that Staten Island has always been in the possession and under the jurisdiction of New York. Who doubts it? *That* is certainly a "historical" fact, which no one questions. If it had not been, whence, and to what end, this discussion? The writer concedes the point fully, and thereby saves himself and his readers an interminable journey through a labyrinth of contradictory statements and conflicting authorities, which the gentleman has skilfully planned—and within which he is left to rove by himself at his pleasure. Staten Island has always been in the possession of New York, despite of every proper interpretation of the grants to New Jersey, and having shown that the course of the Hudson is on the eastern side of the island, the unjustifiable character of that possession is fully established.

An attempt is made to substantiate Mr. COCHRANE's assertion that the "initiation of New Jersey's enterprising encroachments" upon Staten Island, took place in 1681; although such an assertion is entirely inconsistent with the fact, as it is claimed to be, that the island was "adjudged" to New York in 1669. How happens it that, as shown by the gentleman himself, Governor Carteret should have made a "contingent grant of land on Staten Island," in 1668* if no claim to it was set up before 1681? How happens it that Governor Nicolls should have announced the item of intelligence he did, if the question of title was not then in abeyance?

* By inserting the words "in case Staten Island falls within this government" in a fishing license to John Ogden and others.

The writer regrets that he is obliged to differ from his friend Mr. BRODHEAD, as to the importance to be attached to the statement of Governor Nicolls. It is with diffidence that he presumes to question the deductions of one so well-informed upon all points of our colonial history, but he nevertheless is of the opinion that, while unsupported by any corroborative testimony, Nicolls' declaration, when his position is considered, amounts to nothing in the face of constantly recurring indications of a still asserted, unabandoned title to the island, on the part of New Jersey. It is a noticeable fact also that, when the claim was more vigorously prosecuted, not the slightest reference is made by any one to this authoritative settlement of the question years before. On a previous occasion* it was satisfactorily shown that the peculiar position in which Governor Carteret was placed on his arrival at Elizabethtown, in 1665, the subsequent attempt at an exchange of territory, the reconquest by the Dutch and the temporary re-establishment of their authority, and other causes operated to postpone any positive enforcement of the right of New Jersey; but though dormant it was ever considered valid, and was never surrendered until 1833. The wise course of the Provincial authorities in avoiding all collisions with New York by refraining from any forcible attempt to obtain possession, which would, undoubtedly, have proved fruitless from the greater power of that province, and in not pretending to a *quasi* possession by erecting the island into a county, in 1683, is now assumed to be "a very significant fact," arguing that "Staten Island was not considered at that time a part of New Jersey even 'by its own Assembly.'" Under the benign teachings of New York, it is not likely that New Jersey will ever be guilty again of such a mistake as not to resist aggression from the start.

It is a circumstance worthy of note that not a document is known to exist signed by the Duke of York himself, which calls in question the right of the Proprietors of East Jersey to the Island; and not one, professedly issued under his authority, can bear any such interpretation for more than twenty years after the transfer to Berkley and Carteret, and not then until his relations to New Jersey, as we shall see, were materially changed.† He was ever ready to confirm his original grant of *all the*

* See pages 18, 19.

† Although, as has been admitted, Staten Island had been under the government of New York, &c., yet the first positive avowal that it was part of that province, emanating from any one acting for the Duke of York in England, which has fallen under the writer's notice, is in a letter from Sir John Werden to Gov. Dongan, Aug. 27,

1684, in which he says, "Whosoever buys
"land in yt island, it being under yor gov-
"ernemt, he must be lyable (as well as oth-
"ers) to the laws thereof"—(*N. Y. Col.
Doc., III., p. 350.*) and again under date of
Nov. 1, 1683, "Staten Island without doubt
"belongs to ye Duke, for if Sr George Car-
"teret had had right to it, that would have
"beene long since determined, and those

lands west of Long Island and Manhattan Island, and document after document was issued for that purpose; for whatever may have been his faults and vices, and great they undoubtedly were, it is conceded that the Duke was sincere in his friendships. Those who would feign convince themselves and others that "the opiates of John Scot artfully discharged upon his drowsed senses," or any other influences foreign to his own unbiassed inclinations, moved him to part with New Jersey, forget or overlook the close relations existing between him and both Berkley and Carteret—the former, his governor in youth and associate officially and otherwise through life; the latter, one of his most intimate and constant companions, of whose hospitality he frequently partook—which led him to refrain from any act that could be construed as unfavorable to their interests. Through good and through evil repute he appears to have ever been true to them. What greater evidence could he have given of his disposition to quiet any adverse pretensions to New Jersey, or of his "intent and meaning" in relation thereto, than the repeated grants by which he confirmed the original transfer? Note too, the prompt repudiation of Andros' proceedings towards Governor Carteret, and the granting of the deed to the younger Sir George, in 1680, (of which more hereafter,) immediately on receiving Sir William Jones' opinion, to which reference has been already made, that, under the grants to Berkley and Carteret there was "noe reservation of any profit or soe much as of Jurisdiction."*

This opinion of Sir William Jones, by the way, and the action of the

"who broach such fancies as may disturbe
"the quiett of possessions in yt island are
"certainly very injurious to ye Duke, and
"we thinke have noe colour for such pre-
"tences.—(N. Y. Col. Doc. III., p. 352.)
Strange that Sir John could not have in-
formed the Governor how and by whom it
had been "adjudged to New York" in 1669,
if such was the fact. And in this connec-
tion reference may be made to the letter of
the Earl of Perth and his associates, to Gov.
Dongan, dated Aug. 22, 1684, narrating
what had occurred at an interview with the
Duke held in consequence of the adverse
action of Gov. Dongan. They say: "Wee
"Doubt not both the Duke, and they [his
"Commissioners] are fully convinced of
"our right in everie Respect Both of Gon-
"ernment, Ports, and Harbours, free trade
"and Navigation, and having spoke to the
"Duke, we found him verie just, and to ab-
"horre the thought of allowing any thing to
"be done contrary to what he hath past un-
"der his hand and seall."—(N. Y. Col.
Doc. III., p. 348.)

Can it be supposed that in this discussion
of controverted points, Staten Island should
not have been mentioned; or that the Earl
of Perth could have declared the Duke
"verie just" if he had denied the claim to
the Island?

* See page 28. Mr. Dawson does not
think Sir William Jones, in his declara-
tion that the Duke in his grant to
Berkley and Carteret parted with all
right to any profit or jurisdiction, had
any reference "to the question of juris-
diction or right of government, as pretend-
ed"—but what is "jurisdiction" but the
right to govern? Webster defines it as
"the legal power or authority of doing jus-
tice in cases of complaint, the power of
executing the laws"—as "Power of gov-
erning or legislating"—as "The power or
right of exercising authority." The ques-
tion moreover, was submitted to Sir Wil-
liam upon representations from the West
Jersey Proprietors that they had bought
their possessions "for a valuable consid-
"ration, and in the conveyance powers of

Duke under it, explains the circumstances leading to the passage of the act by the New Jersey Assembly, in 1679, which the Gazette's correspondent so laborously misconstrues as manifesting "without complaint or dissent * * a degree of resignation to an unavoidable fate, consistent only with a corresponding knowledge that resistance to that fate would be useless, that the Jurisdiction of the Duke and his servants OVER THESE WATERS was unquestionable." Well, *it did not remain unquestionable very long as Sir William Jones and the Duke made manifest.** The act referred to guaranteed from loss, to the extent of £150, the owners of any vessel that "should be by any of the government of New York arrested, detained, condemned and bona fide made prize of, for the only cause of trading in this Province and *not entering and clearing at New York, &c.*" which was nothing more nor less than one mode of doing what the Merchants of New York did themselves, viz.: opposing the payment of the customs imposed by the Duke;† only with far greater reason, inasmuch, as Sir William Jones says, the Duke had reserved in New Jersey "neither profit nor Jurisdiction." Yet the "Member of the New York Historical Society" devotes a whole column to prove that this action of the New Jersey Assembly, so consistent with a proper regard for their rights and *calculated to bring about a legal decision thereon*, was an *admission* of the Jurisdiction of the Duke of York and his servants over the "waters in question."

Returning from this digression, let it be noted that in all the grants of

"government are expressly granted, for that "only could have induced us to buy it;" say they, "and the reason is plain, because to all prudent men, the government of any place is more inviting than the soil, &c." (*For this remarkable document see Smith's New Jersey, p. 117; Grahame's United States, Vol. II., pp. 284 to 287.*) Thus was the question of government distinctly raised and responded to by Sir William Jones, and his opinion,—"about which" Mr. Dawson says the writer has "talked so wildly"—according to Grahame (*Vol. II., p. 286*) led to the confirmation of the authority of the Proprietors, promoting "the whole of New Jersey at once from the condition of a conquered country to the rank of a free and independent province, and rendering it in political theory the *adjunct* instead of the *dependency* of the British Empire."

"The Duke of York," says Mr. Bancroft (*Vol. II., p. 360*) "promptly acquiesced in the decision, and in a new indenture *relinquished every claim to the territory and the government.*"

"The Duke," says Mr. Mulford in his *History of New Jersey* (*pp. 202, 203.*) "had received and held his American possessions as a Proprietary Lord or Governor. He held authority in connection with property; * * that property might be made the basis of political power, was indeed a vicious and dangerous principle, yet it had been long acknowledged and acted upon in England, and its propriety had not been brought into question * * the grantees of the Duke being put precisely in his situation, they of consequence became rulers as well as proprietors. * * The decision of Sir William Jones was in confirmation of these views * * the question of right in the case is contained in so narrow a compass, and is so plain and open to view, that it seems scarcely possible that any individual of common capacity in judging, should have failed to discern it."

* The act was passed April 3, 1679. Sir William Jones' opinion was given July 28, 1680.

† See New York Colonial Documents, III., pp. 217, 246, 236, 289, &c.

the Duke of York, New Jersey included *all the lands west* of Long Island and Manhattan Island and its eastern boundary is ever the same: the main sea and Hudson's River. As it was in 1664, so was it in 1672; so was it in 1674; so was it in 1680; so was it in 1682; so was it in 1683. It was certainly ever his "intent and meaning" that the veritable Hudson, wherever it might really run, and *not* any other stream so baptized for a purpose, was to be the boundary; and he could find no land west of Long Island and Manhattan Island which was not *also* west of the river. Is it at all probable that, in the face of a continued claim to Staten Island, such a material deviation from that line, as its excision from the lands originally conveyed, should have been intended by him without some indications of it appearing in a change of the description? It seems evident from the correspondence of Gov. Carteret with the governor of New York in 1681, in which the claim to possession is so distinctly made, that a more definite understanding with the Duke of York in relation thereto had been arrived at during the preceding year. And this is confirmed by the letter of Sir John Werden, the Duke's Secretary, written to Gov. Andros on 6th November, 1680, which has been before alluded to. He informs the Governor that his Royal Highness had been pleased "to confirm and release to the Proprietors of both moieties of New Jersey *all their and his right to ANYTHING besides the rent reserved which* " HERETOFORE MAY HAVE BEEN DOUBTFUL whether as to *government*, or "public duties in or from the places within their grants."* This had reference to the deed to be prepared for Sir George Carteret the younger—but as has been already demonstrated, it is not necessary to go further back than the date of the deed to the Twenty-four Proprietors in March 1682-3. This was granted in accordance with the request of the Earl of Perth† for the express purpose, as stated in the instrument itself, of "*better extinguishing all such claims and demands as his said Royal Highness, "or his Heirs might anywise have" to East Jersey.* The peculiar fulness of this grant has been already made the subject of comment, but inasmuch as the "Member of the New York Historical Society" has discovered some flaws therein *which have escaped the learning and acumen of statesmen and lawyers of both England and America*, it is well to refer to the document again. The gentleman recognizes the fulness of the rights and powers granted, but observing that the Duke in conveying them uses the phrase "so far as in him lyeth," he considers the whole instrument simply as the Duke's "confirmation as Lord Paramount of "the Country [or Mesne Lord as he subsequently styles him] of the

* And see Earl of Perth's letter, p. 44, note.

† New York Colonial Documents, III., p. 329.

"change of Lessees of East Jersey, and his permission to navigate the "waters 'leading unto or lying between' the lands thus leased to the "Proprietors, FROM WHICH THE FORMER LESSEES HAD BEEN CAREFULLY EX- "CLUDED." This exclusion is denied, but how confirmatory, is this very admission of the gentleman, of the fact that the Duke was desirous to remove all grounds of disputation as to the rights of the Proprietors? but it is said that he had already granted all these privileges to the younger Sir George, and therefore had nothing left to convey. Let us unravel the truth of the matter.

It will be remembered that it was broadly asserted that "all islands," "bays" "marshes" "soils" and various other concomitants of East Jersey had not been conveyed by the deed of 1674 because not specially enumerated, yet no one can doubt the "intention" of the Duke of York to convey all the lands west of Long Island and Manhattan Island and all belonging to them as fully as he had himself received them from the crown; and it is somewhat curious that the Duke's Secretary in writing to Wm. Penn,* should have expressly nullified the doctrine that the failure to specify islands necessarily left them unconveyed—"neither "can I Judge," said he, referring to Penn's Grant, "how far such an "enumeration of particulars can include any more than ye genll "Boundaries doe"—the insertions of "isles," subsequently, not necessarily adding any thing to the limits of the grant. But, notwithstanding the assertion made by the "Member of the New York Historical Society," at the outset, that these items of property were *never* relinquished by the Duke, we find him subsequently admitting that *they were relinquished* to Sir George Carteret's grandson and heir in 1680; an admission forced from him by the dilemma in which he is placed by the fulness of the grant to the Twenty-four Proprietors. Unless those rights which he claimed to be remaining "with the Duke entirely unimpaired" could be got rid of, there was no way of avoiding the fact of their transfer to the Twenty-four. It will soon be seen how slight an impediment to their title was this presumed prior grant.†

* New York Colonial Documents, III., p. 230.

† Mr. Dawson may have the benefit of his exposition of this point. He says:

"It is evident from the facts, *that the Duke had already granted THE SAME properties, rights, and privileges*, such as they were, *to the younger Sir George Carteret; (Release to Sir George Carteret, the younger, September 10, 1630;)* that he possessed no portion of what he was asked by the Earl of Perth, to release and convey

"to the twenty-four Proprietors;" that he cautiously conveyed, therefore, only "AS "FAR AS IN HIM LYETH," the lands and premises which had been held by Sir Geo. Carteret, the elder, "together with *all Islands, "Bays, Rivers, Waters, Forts, Mines, Minerals, Quarries, Royalties, Franchises, "and Appurtenances whatsoever TO THE "SAME BELONGING, OR IN ANY WISE APPERTAINING; and all the Estate, Right, Title "Interest, Reversion, Remainder, Claim "and Demand whatsoever, as well in Law*

There seems to be room for little doubt that the discussion of the Customs question and the decision of Sir William Jones had drawn the attention of the Duke's legal advisers to some of the dicta respecting the rights of parties having a navigable stream for a common boundary, and among them the plain proposition that even when the right of jurisdiction between two countries or states thus situated, extends to the middle of the stream only, *the right to use the whole stream* for the purpose of navigation, trade and passage must exist as a right common to both parties whether expressly granted or not; for in the grant to the younger Sir George, and subsequently in that to the Twenty-four proprietors, the Duke not only conveyed the Islands, Bays, Rivers, Waters, &c., but adds, "as also the *free use* of all Bayes, Rivers and Waters leading unto or "lying between them;" in this, as in all the other documents emanating from him, manifesting his desire to remove all grounds for cavilling or disagreement. No matter whether the principles of maritime law gave the privilege or not, he was willing the grants should be made so plain that all might understand his "meaning and intent."

Sir George Carteret in his Will,—“to the intent” he said “That my “Debts, Funeral charges, Gifts, and Legacies, may be effectually paid”—gave to five distinguished courtiers, “their Heirs, Executors, and Administrators, the whole Estate, Interest, Term and Terms, for years or “otherwise, which I or any other person or persons in Trust for me have “or hath,” [along with other property] “all my Plantations in New Jersey * * upon this Trust and Confidence that they and survivor or “survivors of them, &c., * * do make sale of all the said premises, “and out of ye Moneys that shall arise upon such sale, pay and discharge such of my said debts, &c.,”—any surplus to be for the benefit and advantage of his grandson George, the son of his deceased son Philip.*

“as in Equity, of HIS SAID ROYAL HIGHNESS, JAMES, DUKE OF YORK, of, in, unto or out of the same, or any Part or Parcel of the same;” and that the substance of this conveyance to the Earl and his associates, was simply his confirmation, as Lord Paramount [or Mesne Lord] of the Country, of the change of the Lessees of East Jersey, and his permission to navigate the waters “leading unto or lying between” the lands thus Leased to the Proprietors, from which the former Lessees had been carefully excluded. That the Duke's meaning was fully understood by the Grantees is evident from the terms of their Commission to their first Deputy-governor, Gawen Laurie, which was in these

words: * * * “constitute and appoint “him Deputy Governor of the said Province, and of all Isles, Rivers, Islands and “Seas WITHIN THE SAME, OR BELONGING “THERETO.” (*Commission*, etc., July, 1683—*Leaming and Spicer*, 168 170.)

Of course, no others were ever claimed. But how trifling these quibblings about the “intentions” of the Duke of York in the face of his reiterated assertions that he conveyed to Sir George *all* he received from the King, within the bounds mentioned, and with it also all the powers, rights and privileges with which he had been invested, and in the face moreover, of the King's full confirmation of this delegated authority?

* E. J. Records, c. 2, p. 17

Sir George died early in 1679 and his Trustees on the 5th and 6th March 1680, conveyed his "Plantations in New Jersey," to Thomas Cremer and Thomas Pocock. The precise terms and object of this transfer are not known, as the instrument itself has not come down to us, but it is evident that it was considered as vesting in them for a time, at least, the full title to the province. It appears also that for some time its existence could not have been known to Lady Elizabeth Carteret or the Duke of York, or the latter would not, in September, 1680, have made the grant he did at that time to Sir George's heir. That grant, as we have seen, was issued by him of his own accord, without any prompting from any one, certainly without the knowledge of the Trustees, purely out of regard for the interests of the family of his old friend Sir George, he having previously given a new grant of similar import for West Jersey. Although the document was communicated by Lady Elizabeth to Governor Carteret, and made the basis of his action in 1681 as before adverted to, yet it was *rendered inoperative by the fact that the title to the province had been for some months in other parties*, and the "Member of the New York Historical Society" is the first person in either hemisphere that has considered it as possessing any legal force.* The Trustees of Sir George—including the Earl of Bath, the young Sir George's father-in-law, who would be likely to appreciate the value of such a document if it had any—the Earl of Sandwich, his maternal grandfather—Messrs. Cremer and Pocock, Lady Elizabeth Carteret, the original twelve Proprietors, the second twelve—and the Duke of York himself, all ignored the document by the execution or acceptance of the deed of March 14, 1682-3, in which they interchangeably, under their hands and seals, certify to all the prior grants connected with the province, but among which the deed of 1680 does not appear. Moreover, a document from the Board of Trade to which is appended the names of Sir Philip Meadows, Sir John Pollixfen, and Abraham Hill, whose acts, judging from the credence the Gazette's correspondent gives to them—are worthy of consideration, gives the following endorsement of the deed of 1682-3: "He the said Duke of York did by "Indenture dated the sixth day of August, 1680, grant and confirm the "Province of West New Jersey, with all the Appurtenances thereunto "belonging to Edward Byllynge, &c., * * * and *did in like manner by "Indenture dated the 4th day of March, 1682* [nothing being said of the "deed to Sir George the younger] grant and confirm the Province of "East New Jersey, with all the Appurtenances thereto belonging, to

* From the manner in which the document is entirely ignored it is a very reason-

able supposition that it was either destroyed or formally revoked.

"James Earl of Perth, William Penn, Esqr., and several other persons, *in whom the title to the same then was*, and to their Heirs and Assigns forever—and by each of the said Indentures did likewise give, grant and assign unto the aforesaid respective Grantees or Assigns ALL AND EVERY SUCH, AND THE SAME POWERS, AUTHORITIES, JURISDICTIONS, GOVERNMENTS, AND OTHER MATTERS AND THINGS WHATSOEVER, *which by the forementioned respective Letters Patents, or either of them, were granted or intended to be granted to be exercised by him the said Duke of York, his Heirs, Assigns, Deputy Officers or Agents.*"*

But how about the phrase "So far as in him lieth?" If anything more than a legal technicality, it simply means this; that the Duke having already conveyed the whole of New Jersey in common to Berkley and Carteret as joint tenants, and had subsequently given deeds in severalty for both East and West Jersey with different boundaries, the propriety of his giving another deed to other parties might be questionable. But the writer is happy to furnish a solution of the problem by the Commissioners of New Jersey in 1769, the gentlemen whom the Gazette's correspondent compliments for their good judgment. They say in their brief:†

"In 1683 East New Jersey became vested in Twenty-four Proprietors, who thought proper to procure the Duke's Confirmation to them. In this Confirmation, the Duke recites his first Grant to Berkley and Carteret, and the partition of New Jersey, and, 'as far as in him lieth,' grants and confirms to the Twenty-four Proprietors, all that Part, Share and Portion, and all those Parts Shares, and Portions, of all that entire tract of Land, and all those entire Premises, *so granted by his Royal Highness to the said John Lord Berkley and Sir George Carteret, and their Heirs, as in, by, and upon the said Partition, was and were vested in the said Sir George Carteret*; so that the words, 'so far as in him lieth,' did not imply any Doubt in the Duke, whether he had authority so far; but whether he had a right to grant at all, as *he had before conveyed all New Jersey to Berkley and Carteret,*" &c.

But why should the patience of the reader be longer trifled with to establish, what no Court in Christendom has ever doubted—(and the document has stood the test of an examination by the most distinguished on both sides of the Atlantic)—the validity, to the full extent of its tenor, of the grant to the Twenty-four Proprietors. ■ Historically and legally it will stand unaffected by any assaults from those, who finding in its ample provisions a most perfect title to all the lands "lying and being to the westward of Long Island and Manhattan Island," would strive to ignore its efficiency by new discoveries in law and physics.

* Leaming & Spicer, p. 603.

† P. 21.

Naturalists tell us that some odd fishes, when endeavoring to flee from some corner into which they may have been driven, have the faculty of ejecting into the waters an extraneous substance, which enshrouds them in such obscurity, that they effect their escape. Such seems to have been the intention of the "Member of the New York Historical Society" on introducing, towards the close of his article, the subject of the right of the Province of East Jersey to a sea-port. But he will meet with as little success through this device as through others he has adopted. He cannot be allowed to escape in a mist of his own creation when it is composed of such materials as the following statement: "The Proprietors, whose principal purpose in purchasing the lands and settling them was to make themselves independent in matters of Government of all other persons," [not certainly of the Crown, for the right of appeal was expressly provided for,] "abandoned the project, and surrendered their 'pretended rights' to the Queen; while Perth Amboy was overshadowed by New York, and New Jersey, IN ALL MATTERS OF COMMERCE, THENCEFORTH, BECAME IN FACT, AS WELL AS IN LAW, ENTIRELY SUBORDINATE TO NEW YORK."

The writer has no desire to draw upon the courteous vocabulary of the Gazette's correspondent. It is presumed from his animadversions upon others that he never "*suppresses*," never "*mutilates*," never hesitates to tell "*the whole truth*," never "*quails*," at any adverse testimony, and it may therefore be attributed to an oversight merely that he should not have discovered and communicated to his readers the fact that IN EVERY CASE in which the right of East Jersey to a seaport was endeavored to be wrenched from her, THAT RIGHT WAS ESTABLISHED—and EVERY ATTEMPT on the part of New York to impose restrictions upon her Commerce, however successful for a time through superior force, *proved eventually abortive*. Statements to this effect have already been made,* but it seems a more thorough refutation is needed.

The first occasion on which the rights of East Jersey in these respects were attempted to be encroached upon by New York was, as we have seen, during the administration of Andros, in 1680; and we have also seen that the manœuvres of New York were nullified by the opinion of Sir William Jones† and the execution of deeds, ordered—"plainly to extinguish ye demand of any Customes, or other duties from ym [the Proprietors] save ye rent reserved as at ye first."‡

The next attempt was made by the indefatigable Dongan, in 1683, through reiterated intimations of what "might, could, would, or should

* See pages 8, 36.

† See page 28.

‡ New York Colonial Documents, III. pp. 235-6.

be " done, to curtail the actual or presumed advantages of East Jersey. The Commissioners of the Duke of York's revenue were very willing to receive from him suggestions that might tend to increase that revenue, but, notwithstanding that the transfer of East Jersey to others naturally lessened the interest of the Duke of York in the preservation of the rights he had originally conferred, yet Dongan's devices availed little until the relations of the Duke to the Province became changed by his succeeding to the throne as James II., early in 1685. That event emboldened Dongan greatly. He found there were "great inconveniences in "having two governments upon one river;" that it "would doe well to "look into the last patent of East Jersey to see whether shipping bee "obliged if they come into Sandy Hook to make entry at New York, "and informed the Board of Trade" that "*we in this government look "upon that Bay that runs into the sea at Sandy Hook to bee Hudson's "River, therefore, there being a clause in my Instructions directing mee "that I cause all vessels that come into Hudson's River to enter at New "York, I desire to know whether his Majy intends thereby those vessels "that come within Sandy Hook;"** and he furnishes the "Member of the New York Historical Society" with an assortment of choice extracts, which, with others of like character, are distilled in his alembic into first class authorities, although any candid and impartial historian would discard them as of little weight, emanating as they do, from the chief parties in interest, the aggressors, and being entirely *ex parte* in their nature.

Finally, Dongan becoming impatient, informs their Lordships "I caused a vessel which came to Amboy to come hither and enter." The Proprietors thereupon took the liberty of complaining to the King of this manifest infringement of his own conferred privileges, and after a fruitless attempt by the Board of Trade, to whom the matter was referred, to get rid of a decision by sending the complaint to Governor Dongan to be answered, their Lordships, by an order of Council on 12th of July 1687, were *commanded* to give the Proprietors a hearing, the result of which was the order of Council dated 14th of August, 1687, which the gentleman gives at length as most damaging to the East Jersey claims!† *That*

* New York Colonial Documents, III., p. 392.

† Analytical Index to New Jersey Documents. p. 12.—The order is as follows, given with all Mr. Dawson's embellishments of italics and capitals—

"After our very hearty commendations : Whereas by former Instructions given unto you His Maty has thought fitt to Order,

That all Ships and Vessels coming within THE RIVER and CHANNEL OF NEW YORK shall enter at His Maty's City and Port of New York, His Maty is pleased, upon further consideration, to direct us to signify his pleasure to you That you permit all Ships & Vessels bound for New Perth," [Perth Amboy] "in His Majesty's Colony of East Jersey to go directly thither without

order on the contrary sustained them in every particular. It confirmed New Perth as a Port of Entry, and Gov. Dongan was delicately informed that "His Majy is pleased, upon further consideration, to direct us to signify "his pleasure unto you that you permit all ships and vessels bound for "New Perth in His Majesty's Colony of East New Jersey to goe directly "thither without touching at New York, or being carried thither, until "further order." Thus did James the Duke of York confirm, as James II., the grant of 1682-3 by recognizing the right of the twenty-four proprietors in the waters which originated this discussion. But the gentleman by his capital letters would convey the idea that this order was a direct recognition of the authority of *New York* over New Jersey, because the person to collect the customs should be appointed by the Governor of New York, or by "*the Receiver General of His Majestys Revenue*," losing sight of the fact that New Jersey then was, as New Jersey has ever been, an upholder of law and order, the Proprietors ever inculcating "submission and obedience to the King." Four years before the issue of this order, they instruct their Deputy Governor "to observe the Act of Navigation, "and to see that it be infringed in nothing as to what relates to the "Kings Customs or otherwise."* It was not the payment of duties to the King they objected to, but the restrictions imposed by New York upon their commercial projects, and these restrictions were ABSOLUTELY REMOVED by this order. Thus ended the second attempt at subjugation.

The next attempt, and the last demanding notice, was made during the administration of Lord Bellomont, as Governor of New York, and furnishes the text on which the Gazette's correspondent hangs the erroneous commentary which has been quoted. The first step towards this aggressive action commenced under Governor Fletcher. The Assembly of New York undertook, again, to impose duties upon the imports into East Jersey which, as Chalmers says,† "could be as little supported by any principle of equity or law" as those denounced and abandoned in 1680, and the proceeding, of course, aroused the opposition it deserved.

In 1694, the Assembly of New Jersey—it may have been in some spirit of retaliation—passed an act for better regulating the trade of the Province,‡ which, although duly subservient to the "Act of Trade and Navigation," conflicted with the interests of New York, much to the

touching at New York or being carried thither, until further order. *Provided always that the Government of East Jersey do suffersuch person as YOU OR THE RECEIVER GENERALL OF HIS MATY'S REVENUE AT NEW YORK for the time being shall appoint, peaceably & quietly to receive and collect for His Maty's use, the same Customs &*

Imposts as are usually paid at New York for such shippis and their lading as are entred there," (Order, etc., August 14, 1687—Colonial Documents, iii, 428, 502.

* Leaming and Spicer, 171.

† Annals, p. 626.

‡ Leaming and Spicer, p. 342.

disturbance of Fletcher's equanimity; and he hinted to the Lords of Trade that it was the intention of the Jerseymen to make "New Perth" a free port; by which it is evident he considered the non-payment of duties to New York equivalent to paying none at all. Nothing definite, however, seems to have resulted from Fletcher's complaints, and in 1696, the right of East Jersey to its port was recognized by the appointment, by the Commissioners of the Customs in England, of a Collector for Amboy.* The Proprietors, however, were anxious to have an end put to these constantly recurring annoyances, and in April, 1697, they obtained from Sir Croswell Levinz, and, in June of the same year, from Sir John Hawles—both "Crown Lawyers," and the latter subsequently an Attorney and Solicitor General—concurrent opinions "*that no customs could be imposed on the people of the Jerseys otherwise than by act of Parliament, or their own Assembly.*"† For several months, the various officers of the crown were pressed for some ultimate and decisive action that might relieve New Jersey from the aggressions of New York, with varying success. There was evidently a wide difference of opinion among these functionaries; for while in one month (October 21, 1697,) the Commissioners of Customs ordered Mr. Randolph, the Surveyor General of Customs in America, to appoint officers to collect duties at both Amboy and Burlington—thus *sanctioning* as Lord Bellomont says, in one of his dispatches, the establishing of two Ports that were to prove "a destruction to the trade of New York,"‡ the next month (November 24,) the Council upon a representation from the Board of Trade issued the order, upon which the "Member of the New York Historical Society" dilates, denying the privileges of a port to Amboy, and exhibiting greater ignorance of the localities than the presumed intelligence of the members would lead us to consider possible.§ But there was an object in view, to effect

* Nov. 21, Analytical Index New Jersey Documents, p. 14.

† Chalmers Annals, p. 626. Analytical Index, New Jersey Documents, pp. 15, 16. East Jersey under the Proprietors, p. 141, &c., Contributions to East Jersey History, p. 295.

‡ New York Colonial Documents, IV., p. 305.

§ Analytical Index, New Jersey Documents, p. 10. To show the positions they assumed, and from which they were so effectually driven, the following extract is given as quoted by Mr. Dawson. The Board of Trade in their Report upon which the order of Nov. 25, 1697 was based, say,

"That it is, in no place that we know of, "either in England or elsewhere, usual to

"have two Ports, independent on each other, in one and the same river, or within the same capes, or outlet into the sea; "such a practice being manifestly liable to "great inconveniences.

"That Perth Amboy lies on one side of "the mouth of the same river which runs "by the Cittie of New York (that river being divided in the mouth of it by an island and called Staten Island) and is within "the same capes."

And in Feb. 23, 1697-8, the Lords addressed the Earl of Bellomont, then Gov. of New York, as follows:

"Since your Lordship's departure from "hence the proprietors of East and West N. "Jersey having been very pressing for the "privilege of Ports in those Countries, we

which the means employed, needed not, they thought, to be closely criticised. With the flight of James II. from England, in December, 1688, and the recognition of William III. as the Sovereign, in February, 1689, old things had passed away, all, so far as the personal relations of the Sovereign to New Jersey were concerned, assumed a new aspect. The questions in which she was interested had not reference thereafter so much to titles to, and boundaries of, the domain conveyed by the Duke of York, as to the extent of the Sovereignty he had a right to transfer with that domain. The surrender of *the government* to the crown was the object sought, and hence arose many of the delays and disappointments to which the Proprietors were subjected in relation to the Port question; they "thought it best to join both together" as the Lords of Trade said, in one of their letters to Lord Bellomont, supposing that rather than endanger the one the Proprietors would abandon the other,* but their schemes were destined to be frustrated; for although the government was eventually surrendered by the Proprietors, their right to the Ports was *previously conceded and legally established*. It came about in this wise. The instructions of Lord Bellomont, who entered upon his duties in April, 1698, were in accordance with the views enunciated by the Council as above stated, and he bent all his energies to enforcing them. Governor Basse, in New Jersey, as firmly asserted the rights of that Province, and his bold determination to sustain them seems to have excited no little surprise among the officials in England. The intelligence of his refusal to heed the order of Council, reached Secretary Popple in December. He at once wished to know what the Lords of the Treasury had heard about it, and was desirous to have the Commissioners of the Customs inform the Board of Trade to what conclusions they had come. Well, in February, 1689, the Commissioners came to the same conclusion that they had evidently arrived at before, that the inhabitants of East

"have been obliged to enquire carefully in-
 "to their pretended right thereunto, and
 "to lay our opinion before His Majty, that
 "they have no such rights, and that it is
 "not convenient it should be granted to
 "them; upon which His Majty having been
 "pleased to GIVE DIRECTIONS ACCORDING-
 "LY, and a copy of our representation be-
 "ing inserted in the order of Council made
 "thereupon, we send you herewithall a
 "copy of the said order, that you may un-
 "derstand the reasons of that determina-
 "tion, and TAKE CARE THAT THE RIGHTS
 "AND PRIVILEGES OF NEW YORK BE NOT
 "INFRINGED."—*N. Y. Colonial Documents*,
 IV., 298.

The Lords signing this were, J. Bridge, water, *Ph. Meadows*, Wm. Blathwayte, *John Pollifsen* and *A. Hill*—those in italics being the same individuals whom we have seen (page 49) confirming the deed to the twenty-four proprietors.

* *N. Y. Col. Doc.*, IV., p. 546—They say, in reference to a certain representation laid before the King—"you will perceive
 "the use we made of their proposal for a
 "trial about the Port of Perth Amboy, by
 "bringing their right of government into
 "the same question; a matter in which
 "they are very tender, as being sensible of
 "the weakness of their title. And we there-
 "fore thought it best to joyn both together,"

Jersey *should be released from the payment of duties to New York.* In March Mr. Secretary expressed a wish that the Lords of the Treasury would inform him what they intended to do, and eventually*—not to prolong the narrative unnecessarily—that course was adopted which was entirely *in accordance with the wishes of the Proprietors* leading to a result DIRECTLY OPPOSED to the opinions of the Lords of Trade for which they are so highly complimented by the Gazette's correspondent. "A careful perusal of the 'opinion' of the Board of Trade," says the gentleman, "and of his Majesty's order in Council *which was based on that 'opinion'* would shed some light on the ridiculous pretences of some who have assumed to speak in behalf of the 'pretended rights' of East Jersey, on other subjects as well as on this." Indeed! Well an opportunity was afforded, not long after the circumstances above narrated, to a dignified body in Westminster Hall to "peruse" that opinion, and to *express an opinion* upon it, and we will see what light *that* opinion shed "on the ridiculous pretences of some."

Lord Bellomont, "feeling himself sure of his Majesty's" support, commenced a course of procedure which resulted in the forcible seizure of a vessel belonging to Governor Basse himself, lying in the harbor of Amboy.† A suit was brought in the Court of Kings Bench, to recover damages for this illegal seizure, in which the whole question as to the right of East Jersey to a port was discussed; and the Court so far from finding that "the rights and privileges of New York" had been "infringed" rendered a verdict in favor of Basse for several hundreds of pounds sterling. Lord Bellomont therefore found it necessary to change the tone of his correspondence considerably. "Your Lordships' directions to me," he wrote in October, 1700, "will not now need to be complied with, *since the Proprietors have carried the cause in Westminster Hall, and* OBTAINED A FREEDOM OF PORT FOR PERTH AMBOY," and again in November, he said, "Mr. Basse has had great good fortune in his trial, upon the account of my seizing the ship Hesther, at Perth Amboy in East Jersey, to have recovered *such great damages of the King* * * * *

* See Analytical Index to N. J. Doc., pp. 20-27.

† "Mr. Basse, the Governor of the Jerseys, in contempt of the orders your Lordships formerly sent to me, loaded the ship Hester at Perth Amboy, in East Jersey, and was sending her on a voyage; on notice whereof, I sent Mr. Hungerford, one of the present Commissioners, and one of my Lieutenants with forty soldiers, and seized and brought the ship away. I have since offered to restore the ship, provided Basse

would have her cleared at this Port, but he refusing so to do, we are going to have her tried. * * * Mr. Basse sent me word he had positive orders from the Proprietors not to yield on no account to any orders I had received, and he threatens to try in Westminster Hall whether Perth Amboy be a Port or no, and to sue me for damages."—(Lord Bellomont to the Lords of Trade, Dec. 14, 1698, N. Y. Col. Doc., IV., pp. 438, 439; see also I., pp. 546, 605, 777, 856, &c.)

"with what conscience such extravagant damages were awarded for that "ship is more proper for your Lordships' enquiry than mine." Doubtless their Lordships did enquire, and became satisfied that the authorities of New York had not "within the capes," the supremacy they had been foolish enough to claim for them.* Thus was the right of the Proprietors of New Jersey to the full enjoyment of Commercial Ports within their respective provinces FULLY ESTABLISHED,† and what becomes of the

* Messrs. Pollixten, Hill, and Meadows, and their associates, after getting the Earl of Bellomont into this awkward position with regard to the ship Hester, and issuing that wonderful "opinion" which excites Mr. Dawson's admiration, very apologetically say to the Earl on April 29, 1701: "and as for Mr. Bass, it was not in our power to hinder those proceedings of his about the ship Hester; but *we did all that in us lay to defend his Majesty's right in that cause, tho' the success did not answer expectation.*"—(N. Y. Col. Doc. IV., 856.)

† Mr. Dawson has since endeavored, in a column of his paper, to refute this assertion; the substance of his remarks being an amplification of the point of the enquiry "why did the Proprietors, if their right to ports was so fully established, so humbly crave the favor from the Crown on surrendering the government?" The answer to which is simply this. The ownership of the lands and waters constituting New Jersey conferred no privilege of the kind. The right to establish ports for "entering Ships and Importing Goods there and Exporting Goods from thence," was a governmental right—one of those which they surrendered—and hence they appeal to the "justness and goodness" of the Crown, to renew to them the advantages flowing therefrom, which the Courts had decided they possessed previous to the surrender. If the people of any place in the United States should think it for their interest to have their town made a Port of Entry, their first step would be to appeal to Congress and throw themselves on the "justness and goodness" of the two Houses, for in no maritime country are Ports of Entry allowed to be established at the mere will of parties desiring them.

Notwithstanding Mr. Dawson's assertions to the contrary, THE PRIVILEGE WAS GRANTED, and from that time down, at no period, unless from accidental causes, has New Jersey been without its Ports, having their respective Collectors of Customs and the commercial facilities belonging to "Ports of Entry." Mr. Dawson says, "that nei-

ther in the surrender from the Proprietors "of their pretended Right of Government, "nor in the Queen's Acceptance of the Surrender, nor in her Instructions to Lord Cornbury as the first Royal Governor, "was the solicited privilege granted or "even mentioned." As to the first two documents, it was not necessary that they should contain a specific reference thereto, but if Mr. Dawson had more closely scrutinized the Instructions to Lord Cornbury, on the very pages of *Leaming and Spicer* from which he quotes, he would have seen passages to this effect—

"* * * You are therefore, in the settling "of a Public Revenue as before directed, to "propose to the Assembly, that such *Customs, Duties, and other Impositions be "laid upon all Commodities imported or exported in or out of our said Province of "Nava Cesarea, or New Jersey, as may "equal the charge that is or shall be laid upon "on the like Commodities in our Province "of New York"*—(*Leaming and Spicer. p. 625.*) Again—"And that we may be better "informed of the Trade of our said Province you are to take especial care that "*due Entries be made in all Ports in our "said Province, of all Goods and Commodities, their Species or Quantities, Imported or Exported from thence, with the "Names, Burden and Guns of all ships importing and exporting the same, also the "names of their Commanders, &c., &c.,"* "*(Ibid. p. 637.)* and in the Governor's Commission, he is expressly authorized to order and appoint * * such and so many "*Ports, Harbors, Cayes, Havens, and other "Places for the Convenience and Security of "Shipping, and for the loading and unloading of Goods and Merchandize, as "with the advice and consent of our said "Council, shall be thought fit and necessary."*—*Ibid. p. 655.*)

It is therefore abundantly evident that, although the Proprietors did not, "to the full extent of their wishes"—as Mr. Dawson quotes from "*Contributions to the Early History of Perth Amboy*"—obtain such ample written stipulations from the

arrogant assumption of the "Member of the New York Historical Society" that "*New Jersey in all matters of commerce, thenceforth, [after the "order of November, 1697] became in fact, as well as in law, ENTIRELY SUBORDINATE TO NEW YORK?*" On the contrary, from that time to the present there has not been a period in which the commercial relations of East Jersey have not been *entirely independent* of New York; being subordinate only to the will of a common Sovereign.

The writer has not thought it necessary, to burden his pages with references to authorities for all the individual facts stated bearing upon this point, as (thanks to Dr. O'Callaghan's well-constructed Index,) those not supported by the specific works he has referred to, may be *readily* found sustained by pages of the New York Colonial Documents *overlooked* by the Gazette's correspondent. Neither has he thought it necessary to enter upon a discussion as to the precise *nature* of the title given by the Duke of York to the grantees of East Jersey, as the question has *nothing to do with the matter at issue*. He will say, however, for the satisfaction of the gentleman, that if in error (as he may have been, as he is no lawyer,) in styling that title a "fee simple," he was led into it *by the Duke of York himself*, who states in his grant to George Carteret the younger, that the "*fee simple of Lord Berkley's Moyetye*" was at that time in Messrs. Penn, Laurie and Lucas. Both Moities were held by the same tenure, and the Duke, or his legal advisers, therefore *intended* to convey a fee simple title, or these individuals could not have had one.* "Intent and meaning" it will be remembered, were to receive particular *attention* in this discussion. But as to this matter of title it is enough to know that ALL the lands "to the westward of Long Island and Manhattan Island with their islands, bays, rivers, waters, &c.," and the "free use of all bays, rivers, and water leading into or lying between the "said premises" were conveyed, or, if it suits the gentleman better, were *intended* to be conveyed by the Duke "IN AS FULL AND AMPLE MANNER" as the same were received by him both as to soil and government; and Charles II. himself, as we have seen, declared the grantees to be "ABSOLUTE PROPRIETORS AND GOVERNORS THEREOF." If subsequent

Crown in relation to their Ports, as they thought would best conduce to the welfare of their province, yet "success attended their efforts"—and that, he has no warrant for asserting, as he does in his usual courteous manner, that "their hopes and their "desires were alike disregarded, the government and its representatives cared as "little for 'Jerseymen' or their particular "interests, as the 'Jerseymen' of to-day "care for the interests or the convenience "of any other persons or communities."

* The writer may also shelter himself under the broad legal wings of Richard Stockton, who in the case of *Arnold vs. Munday*, in the New Jersey Supreme Court, used this language:—"The terms of the grant are as extensive as the English language affords, and as English language could put into a conveyance. It conveys 'all the lands, soils, &c., &c., and appurtenances' *in fee simple*, together with the Power of Government, &c."—(*Halsted's N. J. Reports, I., p. 45.*)

sovereigns thought he overstepped his prerogatives in so doing, that fact does not militate against the "intent and meaning" of the grants as interpreted by the Duke of York himself.*

The reiterations of the "Member of the New York Historical Society" to the effect that "Staten Island and the waters in question were reserved" at any time, are utterly unsubstantiated. They are based upon an assumption, which has been denied throughout this discussion, that Hudson River runs *west* of the island; an assumption which he admits has been disproved by "physical facts" and which the writer holds has been disproved also by "historical facts." To verify the gentleman's assertions, he must first make it apparent that neither island nor waters "appertained" to New Jersey, which he has not yet succeeded in doing.

The writer is now done with this controversy. He was induced to enter upon it, and led to continue it, solely from a desire to relieve his native State from the imputations and aspersions cast upon her,† and he re-

* Mr. Dawson set out to prove that the waters under discussion were "historically" the waters of Hudson River—but before concluding his paper entered upon a *legal* disquisition as to the nature of the title transferred by the Duke of York, a question which, as is stated in the text, has nothing to do with the historical character of the discussion. The writer leaves the subject for the consideration of those familiar with legal technicalities, but there are points that even the least informed on such matters can without difficulty recognize as established beyond controversy, and he conceives, CHIEF JUSTICE TANEY said, all that was necessary on this question of title, in the opinion of the SUPREME COURT in the case already referred to "Martin *vs.* Waddell"—"The estate and right of the King," said the Court, "passed to the Duke in the same condition in which they had been held by the crown, and upon the same trusts. Whatever was held by the King as a prerogative right passed to the Duke in the same character. * * * It appears by the special verdict, that all the interest of the Duke in East New Jersey, including the royalties and powers of government, were conveyed to these Proprietors, as fully and amply and in the same condition as they had been granted to him, and they had the same dominion and propriety in the bays, and rivers and arms of the sea, and the soil under them, and in the right of fishery that had belonged to him under the original charter * * and being thus entitled, they in 1702, surrendered and yielded up to Anne, Queen of

England, and to her heirs and successors, *all the powers and authorities in the said Letters Patent granted, &c.*" These were the "pretended rights" that Mr. Dawson so frequently refers to.

† Throughout the discussion New Jersey has been referred to by the New York gentlemen always in contumelious terms. According to the newspaper reports, on the morning after the reading of Mr. Cochran's paper, he "introduced his subject by humorously remarking that he was doubtless exhibiting much temerity in venturing into an enemy's country; for although not in a state of war with New Jersey, it was generally conceded that she was out of the United States," at which very new and appropriate jest there was considerable "laughter;" and the extracts given from his paper, show that, this spirit of superciliousness with which he approached the consideration of a subject which he considers of grave importance, continued to be manifested throughout. But it was left to Mr. Dawson to exhibit in full measure the feelings of hostility entertained towards the State. As Mr. Cochran commenced his labors in terms of disparagement, so his coadjutor concludes his as follows: "She [New Jersey] still stands in all her naked deformity, as much an object of general contempt, save to the few who habitually minister to her abominations as Suffolk's 'Lean-faced Envy' in 'her loathsome Cave.'"

What New York may have gained by having such advocates the future will disclose.

grets that her defence could not have been confided to abler hands. The results elicited are as follows :

I. It was asserted that "the Hudson River empties itself through its "two mouths, the Narrows and the Kills, into the Bay of New York." He has shown that this *never* was and *never will be true*, inasmuch as not a drop of the water of the Hudson flows either way through the channel west of Staten Island ; and *this has been acknowledged by his opponents as an incontrovertible "physical fact."*

II. It was asserted that the Grants of Charles II. and the Duke of York in 1664, were rendered null and void by the reconquest by the Dutch in 1672 and other causes : He has shown that neither the King nor the Duke ever called in question their validity, but were ever ready to give any other guarantees requested of them.

III. It was asserted that the Proprietors of New Jersey derived their rights *SOLELY* through the grants of 1674. He has shown that subsequent grants, more precise, more full, and more complete, particularly on the points in which those of 1674 are asserted to be deficient, were subsequently given for the very purpose of removing all doubts and quieting all disputes as to the "intent and meaning" of the grantors ; and moreover, that these subsequent grants have repeatedly been recognized in courts of the highest character on both sides of the Atlantic as conferring all the rights and privileges claimed by New Jersey through them, and that the ultimate decision of the Supreme Court of the United States, upon the mutual rights of New York and New Jersey under them, would have long since been obtained had not New York *refused* to submit to that Court the questions at issue.

IV. It was asserted that the Duke of York, in 1674, retained to himself certain powers of government, and certain portions of the tract previously conveyed, which became thereafter part of his Colonial possessions and "are still to be considered 'historically' as belonging to the State of New York." He has proved under James' own hand and seal, that he always considered the transfer of New Jersey to have been made in as ample a manner as received by him from the King ; and he has moreover exhibited the opinion of Sir William Jones and other eminent lawyers that *nothing* had ever been retained by the Duke excepting the nominal rent.

V. It was asserted that Staten Island was adjudged to New York in 1669, but no clue can be furnished to the person, court, or authority, by which it was so adjudged. He has shown that while there is no doubt of such a report having been sent over from England by Governor Nicolls, it was still an unsettled question in 1679 ; and, as such, it is reasonably to be supposed, was one of those intended to be covered by the provis-

ions of the subsequent grants. If it were not included, but on the contrary, intended to be reserved, that fact would undoubtedly have been indicated by a change of description in the grants.

VI. It was asserted that "all well informed persons" considered the waters west of Staten Island as part of Hudson River, although no evidence of any system of nomenclature, in conformity with such an opinion having been in practice, has been presented. He has shown that specific titles, having no reference to Hudson River, have uniformly been conferred upon those waters in documents and maps from the earliest times to the present.

VII. It was asserted that the grantees of New York held the province by only a qualified title; He has shown that Charles II, considered them as "absolute Proprietors and Governors"—subject, of course, to the right of appeal to the Crown, and that so far as their *rights* as "proprietors" are concerned, they have time and again been confirmed, while the *authority* they possessed as "governors" never, certainly, reverted to New York, but is now legitimately vested in the State government of New Jersey.

VIII. It was asserted that an order of the Board of Trade in November, 1697, rendered New Jersey "*thenceforth in all matters of commerce, in fact, as well as in law, entirely subordinate to New York.*" He has shown that every attempt on the part of New York to subject the commerce of New Jersey to its caprices most signally failed. And if any other points brought forward have not been touched upon, it is owing to their irrelevancy or to the fact that they carried their refutation so plainly with them as to render their discussion unnecessary.

In conclusion the writer would remark, that he is pleased to find the fairness and sound ideas of the Commissioners of New Jersey of 1769, recognized, even at this late day. It is to be regretted that their views were not endorsed at that time as they now are by the Gazette's correspondent. Meeting with his approval, as they seem to do, his attention is solicited to the following sentences which are also extracted from their "Brief:" "Where a deed will admit of two constructions, the one definite and certain, the other vague and uncertain, that which is certain "should be taken and the other rejected." Nothing could be more "definite and certain," for the eastern boundary of New Jersey, than the direct line formed by the "Main Sea and Hudson's River;" nothing more "vague and uncertain" than the circuitous, undefined line, the adoption of which is essential to the substantiation of the claims of New York to Staten Island and the waters in question.

It is to be hoped, as the gentleman exonerates Mr. COCHRANE from any intention, by his paper, "to disturb the peaceful relations of the

two States, as they were settled by the inter-State Treaty of 1834," and disclaims any such intention on his own part, that the sincerity of his protestations may be evinced by a cessation of the attacks upon New Jersey, New Jersey institutions, and New Jersey writers.* W. A. W.

Newark, New Jersey, December, 1865.

Since the foregoing papers were placed in the hands of the printer, Mr. COCHRANE has written a long laudatory letter to Mr. Dawson, in which he identifies himself with that gentleman's course and views in the following language:

"I was pleased to commit to your superior means and opportunities, the labor of excavating the deposits of Colonial History, and of drawing from their recesses its dimmed documents. The fitting commentary on your ability, is the success which has crowned it. You have rescued from the obscurity of encroaching time, the authentic documents of forgotten events, you have elicited from oblivion the perishing memorials of a vanishing age; you have exhumed the judicial decrees, and disclosed the Orders in Council which affect interests and guide opinions; you have prolonged to our generation the remembrance of the learning and the rectitude of a former day. Where fallacy obtruded, you baffled it; where mutilation marred, you exposed it; where error usurped, you conquered it."

As this opinion has been laid up for coming ages in the columns of Mr. Dawson's own paper, it may be that, in the far-off future some equally brilliant disputant, when engaged in "excavating the deposits of Colonial History" may rescue it from "the obscurity of encroaching time" and find it to be of as little value in establishing a fact, as the opinions, decrees and Orders in Council "elicited from oblivion" by the gentleman so highly eulogized. Such an eulogium leads the writer very naturally, to attach more importance to his share in the controversy than he has hitherto, as he had not the

* This reasonable hope has been responded to by several additional columns of matter, of still greater virulence.

least idea that he was combating an antagonist of such extraordinary powers. It is certainly remarkable that he should have been able—"lumbered with ignorance" as Mr. Cochrane thinks him—to sustain such an unequal conflict.

Although Mr. COCHRANE considered the Review of his paper so "impotent" as to be undeserving of a reply, he yet devotes nearly two columns of the paper to animadversions upon the character of the Review and the course of its author, the effect of which, when they shall be "exhumed" from amid "the perishing memorials of a vanishing age," it is painful to anticipate. In the mean while, too, the dreadful penalty is imposed upon the writer, of having his "sardonic playfulness"—his "diatribes"—his "blear optics"—his vanity, "which mistook for argument his unhappy efforts in the character of a *bel esprit*"—his "opacity of intellect"—his "hecatombs of massacred facts"—his "licentious intimacy with maps"—and the fact that he is as ignorant "as the exegencies of his reputation require him to be" (very lucid that), with other remarkable peculiarities and heinous offences which were exhibited in the Review—all, perpetuated in that depository of "authentic documents of forgotten events"—the *Yonkers Gazette*! It is a difficult matter to discuss seriously, what Mr. COCHRANE considers of "great pith and moment," under such circumstances. A few remarks must suffice.

He feels particularly outraged by the writer's remarking that, the terms of the agreement of 1833-4 would be found "to have been framed" "in a spirit of anxious solicitude to put an end forever to the disputes" "between the two States, the concessions being for the most part, made" "by New Jersey; and it is hoped that, neither by word nor deed, may" "the good understanding then arrived at be disturbed"—and he thus vents his indignation—

"Framed in a spirit of anxious solicitude to put an end forever to the "disputes between the two States!" Then why does New Jersey, now "lay claim to the ship channel of New York?"

"The concessions being for the most part made by New Jersey!" If "so, why does New Jersey now lay claim to the ship channel of New York?"

"And it is to be hoped that by neither word nor deed, may the good "understanding *then* arrived at be disturbed!" Then why does New "Jersey *now* lay claim to the ship channel of New York?"

Now, the simple answer to this reiterated question is that, New Jersey asks for nothing, lays claim to nothing, desires nothing which is not hers according to "the good understanding *then* arrived at." She conceives that an adherence to *her* engagements, and a like adherence on the part of New York to *hers*, is the best course to prevent that understanding

from being "disturbed," or the revival of "disputes between the two States;" and she believes, moreover, in *leaving it to the Courts to act upon the questions that may arise under that agreement according to the merits of the respective cases, unaffected by outside pressure, or ex parte presentations of side issues before Historical Societies or otherwise.*

Mr. COCHRANE quotes from his paper the following paragraph—"The State of New Jersey, contending that the Main Sea flows only without Sandy Hook, ASSERTS, by an extension thereto of the central dividing line, the right to the Southerly one-half of all the Lower Bay of New York, inclusive of a substantive section of the ship channel to the harbor of New York," and then adds, "This assertion, couched in judicial process, *reposes within the Federal Courts, encouraged and supported by New Jersey, the aggressors, and resisted by New York, simply in self-defense.*"

Has the gentleman no confidence in the ability and disposition of the Federal Courts to consider calmly and decide justly the questions referred to their arbitrament? or does New York now, as we have seen she did in other years, call in question the authority of the Court of last resort, to take cognizance of cases involving the "sovereignty and jurisdiction" of the States of the Union? * New Jersey, strong in her convictions, "reposes" her trust in the Federal Courts, and will abide by their decisions. The writer, however, is unwilling to subject himself to any further defamatory accusations, harmless though they may be, by presenting any additional statements or arguments to be misrepresented by Mr. COCHRANE; and therefore avails himself of the following extracts from a charge by Judge SHIPMAN in the United States Circuit Court, on the 3d February, 1864, in the case of "*Whitman vs. Thompson*:" the defendant *not* being a citizen of New York as one would suppose, but a citizen and civil officer of New Jersey, *brought into Court by a citizen of New York* for an alleged illegal seizure of a vessel under the laws of New Jersey. Judge Shipman's charge may perhaps enlighten others, if not Mr. COCHRANE himself, upon the subject of his enquiries.

"The first question to be determined," said the Judge, "is, what are the boundaries of the States of New York and New Jersey in the vicinity of the alleged trespass. The seizure took place on the waters lying between the south side of Staten Island and the shore of New Jersey, westerly of a north and south line drawn from the west point of Coney Island to the point of Sandy Hook. The boundaries of these two States in these waters are fixed and defined by a treaty or compact entered into by them, through a joint commission duly appointed for that purpose. This compact was ratified by the Congress of the United States and ap-

* See page 21.

proved June 28, 1834. The first article in this treaty is in these words: 'The boundary line between the States of New York and New Jersey, from a point in the middle of Hudson River, opposite the point on the western shore thereof, in the 41st degree of north latitude, as heretofore ascertained and marked, to the *main sea*, shall be the middle of said river, of the Bay of New York, of the waters between Staten Island and New Jersey, and of Raritan Bay to the *main sea*, except as hereinafter particularly mentioned.' The exceptions afterwards made in the treaty do not affect the questions now before us, and, therefore, need not be noticed here. This article which I have read defines the entire boundary between the two States, from the starting point in the middle of the Hudson River, down through all the waters separating the land of the States to the 'main sea.' This boundary line is declared, in simple and unmistakeable language, to be the middle of all those waters. It matters not by what name they are called. The whole chain of waters from the starting point to the main sea is divided in the middle, and this central line fixes the territorial limits of the two States respectively. The eastern and northern limit of New Jersey, and the western and southern limit of New York meet and terminate at this line in the middle of these waters throughout its entire length to the main sea. You see at once, gentlemen, that the only question in dispute between the parties in this part of the case is as to the eastern or lower terminus of this line. It is agreed that it terminates at the 'main sea,' and the solution of the question depends upon the interpretation to be given to these two words. The duty of determining the meaning of these two words has been submitted to the court by the counsel on both sides, as a question of law for the court to determine. *I therefore charge you, gentlemen, that the words 'main sea,' as used in the treaty are synonymous with 'ocean,' and therefore that by the terms of the compact, these States, have concurred, with the assent of the United States, in fixing their respective boundaries at the middle of the bay or waters between Staten Island and the New Jersey shore as far East as Sandy Hook, where the bay terminates in the main sea or ocean.* This is the natural and rational construction of this treaty when applied to the subject matter to which it relates. *It is hardly to be supposed that these enlightened States, while entering into a formal and solemn treaty in order to fix their respective boundaries, should leave a considerable and important portion of them wholly undefined.* The construction insisted on by the plaintiff's counsel is that the words 'main sea' are to be understood as referring to the waters outside of or beyond what, is called in the books, the *finces terrae*, that is, the jaws of the land where so near each other that persons can be clearly distinguished with the naked eye from one shore to the other. *But such an interpretation would be inconsistent with the language of the treaty itself.* It is conceded that the most eastern points on the respective shores, where this test of distinguishing persons clearly from one to the other could be applied, cannot be further east than Prince's Bay lights and Mattavan Creek; and yet the boundary line designated in the treaty extends east of a line drawn from shore to shore at these points, for it speaks, in conferring exclusive

jurisdiction upon New Jersey over the west end of the bay, of 'that part of Raritan Bay lying west of a line drawn from the light-house at Prince's Bay to the mouth of Mattavan Creek.' The treaty itself thus recognizes Raritan Bay as extending east of this line, and yet it divides the waters of this entire bay to the main sea. It is clear, therefore, that as the treaty extends the boundary line east through Raritan Bay beyond the *fauces terrae*, it could not have regarded the latter as fixing the place where the bay ends, and the main sea begins.* There is nothing in the configuration of the bay itself that suggests its terminus short of the main ocean, or at least short of the main ship channel which passes on the east side of Staten Island, southerly round the Southwest Spit, and easterly by Sandy Hook Point. There is no description of the bay in the treaty or in the evidence, which suggests a line west of this where the bay ends and the main sea begins. No one would attempt, upon the evidence before the court, to draw a line from Staten Island to the New Jersey shore, and say the waters west of such a line are Raritan Bay, and east of the same the "main sea." The descriptive terms "Raritan Bay" and "main sea" are evidently used in this treaty as designating two distinct bodies of water, and as the *fauces terrae* are disregarded by the whole tenor of this part of the instrument, when read in the light of the facts touching the width of the bay, *the conclusion is irresistible that the term "Raritan Bay" refers to the body of water embosomed within the shores of the two States, and that of the "main sea" to the ocean lying outside.* The reason for extending the boundary line as far east as the great ship channel which passes southerly on the east of Staten Island, and out to sea by Sandy Hook Point, would seem to be as numerous and cogent as those for defining it in the other parts of these waters. Such a division was entirely consistent with the dignity of these States, and of the United States, and within the power of the contracting parties. The freedom of navigation is carefully preserved over all these waters. For *that* purpose they are all free, and neither New York nor New Jersey has any exclusive right therein. The latter States have simply, and, as I think, *with great wisdom*, fixed a line which shall mark their territorial boundaries, and the limits of their respective jurisdictions."

If therefore, "the law allows it, and the Court awards it," why should not New Jersey both claim and enjoy that which is hers?"

It gives the writer pleasure to quote, in conclusion, Mr. COCHRANE'S closing remarks in the letter referred to. In any other connection, they might be construed into a rebuke of the language indulged in by Mr. Dawson, but following immediately, as they do, the panegyric upon that gentleman, it is not to be presumed that such was their aim. It is to be

* It will be observed that the Court on the part of New York took very different grounds in the case before Judge Shipman, from those taken by Mr. Cochrane and Mr. Dawson. If the "main sea" now, is all

beyond the *fauces terrae*, such must always have been the case. What becomes then of the arguments based upon the assumption that all the waters within Sandy Hook are waters of Hudson River?

regretted that the same respect for New Jersey was not before expressed. The paragraph is as follows:

“New York and New Jersey, when yet two hundred years have passed, as near two hundred years have gone, of mutual discord and contest, will survive then, as now, prosperous, great and free—respected by all, respecting each other. Then, when the actors in this passing scene shall have expended their brief breath, and their life be summed with them that sleep, their petty passions and their joys, their little griefs and their hopes, will long have descended into the universal tomb! But still mighty and powerful will continue New York and New Jersey—mother and daughter—enduring, and as durable as the waters which divide them.”

W. A. W.

NEWARK, March, 1866.

THE FOLLOWING is the Act of Congress confirming the agreement between New York and New Jersey in 1833.

An ACT giving the Consent of Congress to an agreement or compact entered into between the State of New York and the State of New Jersey, respecting the territorial limits and jurisdiction of said States.—(*Chap. 126, Laws passed at the 23d Congress.*)

Whereas Commissioners duly appointed on the part of the State of New York, and Commissioners duly appointed on the part of the State of New Jersey, for the purpose of agreeing upon and settling the jurisdiction and territorial limits of the two States, have executed certain articles, which are contained in the words following, viz.:

Agreement made and entered into by and between Benjamin F. Butler, Peter Augustus Jay and Henry Seymour, Commissioners duly appointed on the part and behalf of the State of New York, in pursuance of an act of the Legislature of the said State, entitled “An act concerning the territorial limits and jurisdiction of the State of New York and the State of New Jersey” passed January 18th, 1833, of the one part; and Theodore Frelinghuysen and James Parker and Lucius Q. C. Elmer, Commissioners duly appointed on the part and behalf of the State of New Jersey, in pursuance of an act of the Legislature of the said State, entitled “An act for the settlement of the territorial limits and jurisdiction between the States of New Jersey and New York” passed February 6th, 1833, of the other part.

ARTICLE FIRST. The boundary line between the two States of New York and New Jersey, from a point in the middle of the Hudson River, opposite the point on the west shore thereof in the forty-first degree of

north latitude as heretofore ascertained and marked, to the main sea, shall be the middle of the said river, of the Bay of New York, of the waters between Staten Island and New Jersey, and of Raritan Bay, to the main sea ; except as hereinafter otherwise particularly mentioned.

ARTICLE SECOND. The State of New York shall retain its present jurisdiction of and over Bedlow's and Ellis's islands ; and shall also retain exclusive jurisdiction of and over the other islands lying in the waters above mentioned and now under the jurisdiction of that State.

ARTICLE THIRD. The State of New York shall have and enjoy exclusive jurisdiction of and over all the waters of the bay of New York ; and of and over all the waters of Hudson river lying west of Manhattan Island and to the south of the mouth of Spuytenduyvel creek ; and of and over the lands covered by the said waters to the low water mark on the westerly or New Jersey side thereof ; subject to the following rights of property and of jurisdiction of the State of New Jersey, that is to say.

1. The State of New Jersey shall have the exclusive right of property in and to the land under water lying west of the middle of the bay of New York, and west of the middle of that part of the Hudson river which lies between Manhattan Island and New Jersey.

2. The State of New Jersey shall have the exclusive jurisdiction of and over the wharves, docks and improvements, made and to be made on the shore of the said State ; and of and over all vessels aground on said shore, or fastened to any such wharf or dock ; except that the said vessels shall be subject to the quarantine or health laws, and laws in relation to passengers, of the State of New York, which now exist or which may hereafter be passed.

3. The State of New Jersey shall have the exclusive right of regulating the fisheries on the westerly side of the middle of the said waters, *Provided*, That the navigation be not obstructed or hindered.

ARTICLE FOURTH. The State of New York shall have exclusive jurisdiction of and over the waters of the Kill Van Kull between Staten Island and New Jersey to the westernmost end of Shooter's Island in respect to such quarantine laws and laws relating to passengers, as now exist or may hereafter be passed under the authority of that State, and for executing the same ; and the said State shall also have exclusive jurisdiction, for the like purposes of and over the waters of the sound from the westernmost end of Shooter's Island to Woodbridge creek, as to all vessels bound to any port in the said State of New York.

ARTICLE FIFTH. The State of New Jersey shall have and enjoy exclusive jurisdiction of and over all the waters of the sound between Staten Island and New Jersey lying south of Woodbridge creek, and of and over all the waters of Raritan bay lying westward of a line drawn from the light-house at Prince's bay to the mouth of Mattavan creek ; subject to the following rights of property and of jurisdiction of the State of New York, that is to say :

1. The State of New York shall have the exclusive right of proper-

ty in and to the land under water lying between the middle of the said waters and Staten Island.

2. The State of New York shall have the exclusive jurisdiction of and over the wharves, docks and improvements made and to be made and to be made on the shore of Staten Island, and of and over all vessels aground on said shore, or fastened to any such wharf or dock; except that the said vessels shall be subject to the quarantine or health laws, and laws in relation to passengers of the State of New Jersey, which now exist or which may hereafter be passed.

3. The State of New York shall have the exclusive right of regulating the fisheries between the shore of Staten Island and the middle of the said waters; *Provided*, That the navigation of the said waters be not obstructed or hindered.

ARTICLE SIXTH. Criminal process under the authority of the State of New Jersey against any person accused of an offence committed within that State; or committed on board of any vessel being under the exclusive jurisdiction of that State as aforesaid: or committed against the regulations made or to be made by that State in relation to the fisheries mentioned in the third article; and also civil process issued under the authority of the State of New Jersey against any person domiciled in that State, or against property taken out of that State to evade the laws thereof; may be served upon any of the said waters within the exclusive jurisdiction of the State of New York unless such person or property shall be on board a vessel aground upon, or fastened to, the shore of the State of New York, or fastened to a wharf adjoining thereto, or unless such person shall be under arrest, or such property shall be under seizure, by virtue of process or authority of the State of New York.

ARTICLE SEVENTH. Criminal process issued under the authority of the State of New York against any person accused of an offence committed within that State; or committed on board of any vessel being under the exclusive jurisdiction of that State as aforesaid, or committed against the regulations made or to be made by that State in relation to the fisheries mentioned in the fifth article; and also civil process issued under the authority of the State of New York against any person domiciled in that State, or against property taken out of that State, to evade the laws thereof, may be served upon any of the said waters within the exclusive jurisdiction of the State of New Jersey, unless such person or property shall be on board a vessel aground upon or fastened to the shore of the State of New Jersey, or fastened to a wharf adjoining thereto, or unless such person shall be under arrest, or such property shall be under seizure by virtue of process or authority of the State of New Jersey.

ARTICLE EIGHTH. This agreement shall become binding on the two States when confirmed by the Legislatures thereof, respectively, and when approved by the Congress of the United States.

Done in four parts (two of which are retained by the Commissioners of New York to be delivered to the Governor of that State, and the other two of which are retained by the Commissioners of New Jersey, to be delivered to the Governor of that State,) at the City of New York, this

sixteenth day of September, in the year of our Lord one thousand eight hundred and thirty-three, and of the independence of the United States the fifty-eighth.

B. F. BUTLER,
PETER AUGUSTUS JAY,
HENRY SEYMOUR,
THEO. FRELINGHUYSEN,
JAMES PARKER,
LUCIUS Q. C. ELMER.

And whereas the said agreement has been confirmed by the Legislatures of the the said States of New York and New Jersey respectively,

Therefore

[SEC. 1.] *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the consent of the Congress of the United States is hereby given to the said agreement, and to each and every part thereof, *Provided*, that nothing therein contained shall be construed to impair or in any manner affect, any right of jurisdiction of the United States in and over the islands or waters which form the subject of the said agreement.

Approved, June 28, 1834.



Handwritten text in the top right corner, possibly a signature or date.





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